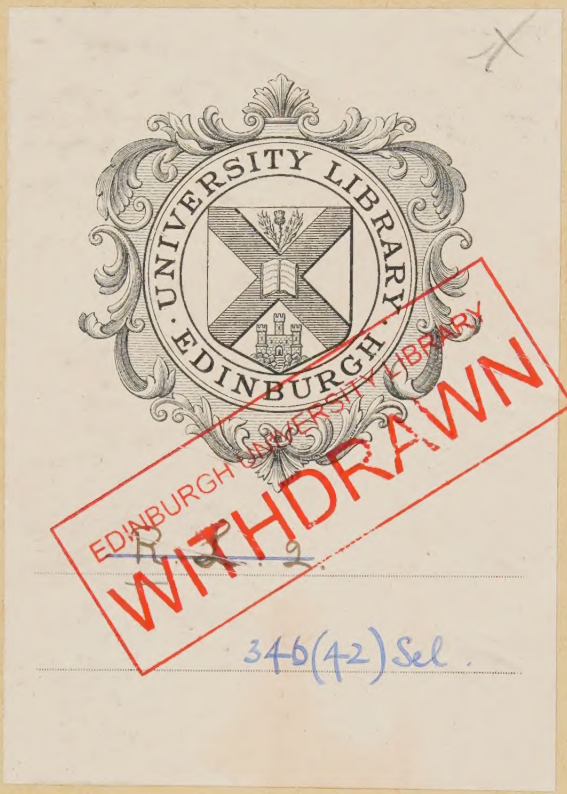

UNIVERSITY LIBRARY
EDINBURGH
EDINBURGH UNIVERSITY LIBRARY
WITHDRAWN

346(42) Sel.

Edinburgh University
Library
RETURN BY

- 1 MAR 2007

10 OCT 2011

WITHDRAWN
30150 007267781

THE

PUBLICATIONS

OF THE

Selden Society

περὶ παντὸς τὴν ἐλευθερίαν

VOLUME XXVII

FOR THE YEAR 1912

EDINBURGH UNIVERSITY LIBRARY
WITHDRAWN

Selden Society

FOUNDED 1887

TO ENCOURAGE THE STUDY AND ADVANCE THE KNOWLEDGE OF THE HISTORY OF ENGLISH LAW.

Patron:

HIS MAJESTY THE KING

President:

MR. WALTER CHARLES RENSHAW, K.C.

Vice-Presidents:

THE HONOURABLE MR. JUSTICE JOYCE.

SIR CHARLES CHADWYCK HEALEY, K.C.B., K.C.

Council:

MR. SIDNEY O. ADDY.
MR. W. PALEY BAILDON.
THE RIGHT HON. SIR H. H. COZENS-HARDY, M.R.
DR. EDWIN FRESHFIELD.
MR. BOYDELL HOUGHTON.
PROFESSOR COURTNEY KENNY.
SIR H. C. MAXWELL LYTE, K.C.B.
MR. R. F. NORTON, K.C.
THE RIGHT HON. LORD JUSTICE FLETCHER MOULTON.
MR. THOMAS RAWLE.
THE RIGHT HON. SIR ROBERT ROMER, G.C.B.
MR. C. A. RUSSELL, K.C.
THE HON. MR. JUSTICE WARRINGTON.
MR. T. CYPRIAN WILLIAMS.
MR. J. G. WOOD.

Literary Directors:

THE RIGHT HON. SIR F. POLLOCK, Bart. (13 Old Square, Lincoln's Inn, London).

PROFESSOR VINOGRADOFF (Court Place, Iffley, Oxford).

Honorary Auditors:

MR. J. W. CLARK, K.C. MR. HUBERT HALL.

Honorary Treasurer:

MR. J. E. W. RIDER (8 New Square, Lincoln's Inn, London).

Honorary Secretary:

MR. B. FOSSETT LOCK (11 New Square, Lincoln's Inn, London).

Hon. Secretary and Treasurer for the United States:

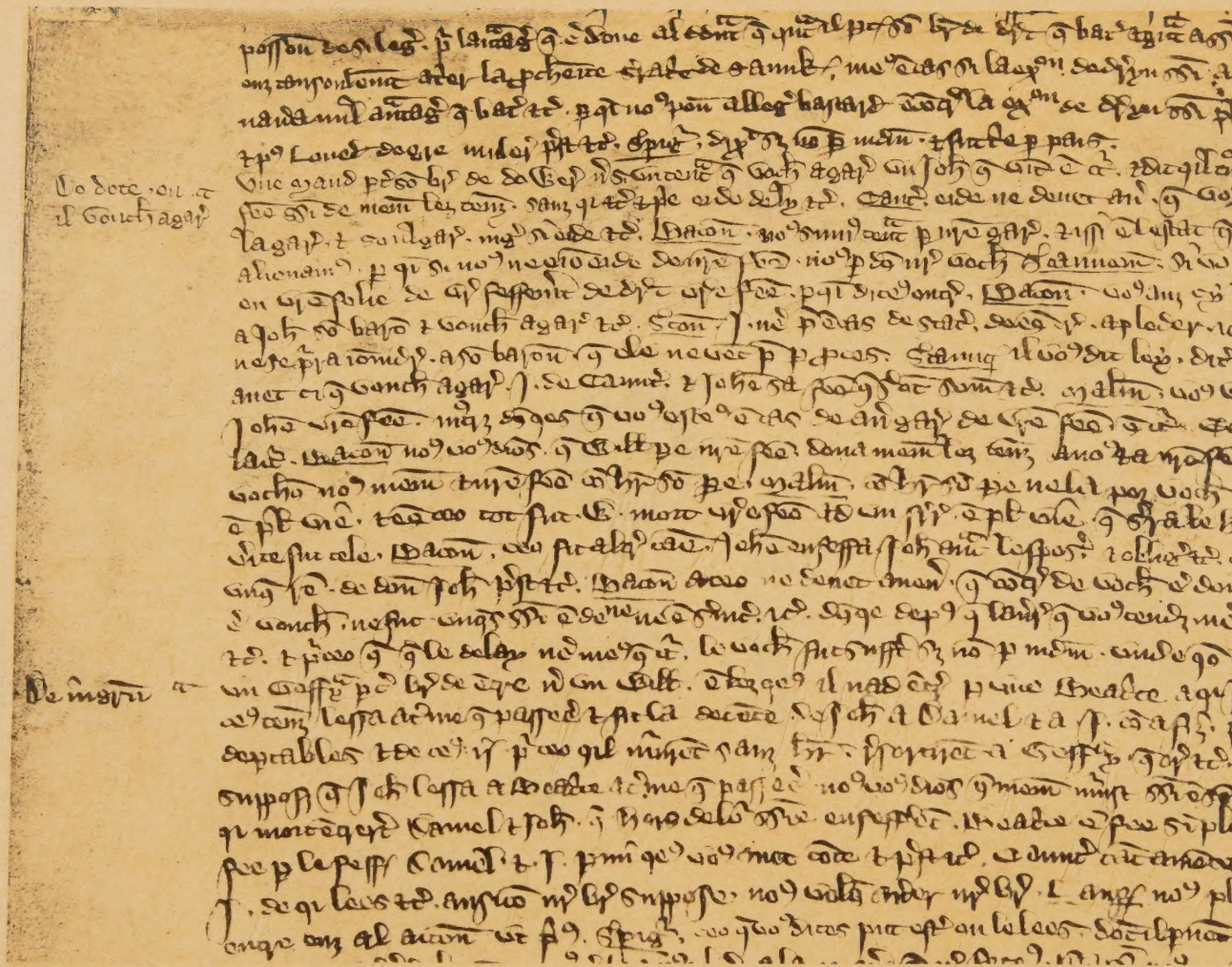
MR. RICHARD W. HALE (60 State Street, Boston, Mass.).

The Year Books Series.

VOL. VII.

PRINTED BY
SPOTTISWOODE AND CO. LTD., LONDON
COLCHESTER AND ETON

EX BIBL. UNIV. EDINBURGEN.



Collotype from Photo by Donald Macbeth.

FACSIMILE OF PORTION OF BRIT. MUS. COTTON MS. "FAUSTINA," C. VI. FOL. 30D.

See pages xx, xliii, 75, 125.

Selden Society

YEAR BOOKS OF EDWARD II.

VOL. VII.

THE EYRE OF KENT
6 & 7 EDWARD II.

A.D. 1313–1314

VOL. II.

EDITED
FOR THE SELDEN SOCIETY
BY
WILLIAM CRADDOCK BOLLAND
OF LINCOLN'S INN AND THE NORTH EASTERN CIRCUIT, BARRISTER-AT-LAW
THE LATE
FREDERIC WILLIAM MAITLAND
DOWNING PROFESSOR OF THE LAWS OF ENGLAND, CAMBRIDGE
AND THE LATE
LEVESON WILLIAM VERNON HARCOURT
OF GRAY'S INN, BARRISTER-AT-LAW

He [Serjeant Maynard] had such a relish of the old year books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.
ROGER NORTH

C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.
ALBERT SOREL

LONDON
BERNARD QUARITCH, 11 GRAFTON STREET, W.
1912

All rights reserved

PREFACE

BY THE HONORARY SECRETARY.

Professor Maitland's transcript and Mr. Vernon Harcourt's collations with other MSS. (see Preface to Vol. I.) have still been used in the production of this volume. But the decision of the Council to extend the work to three volumes, for the purpose of producing it in a complete form, has thrown upon Mr. Bolland the task of making a considerable number of further transcripts and collations by way of additions to the text. The revision of the whole text, the translation, notes, indexes, introduction, etc., are also his work. By far the largest share of responsibility for the volume is accordingly Mr. Bolland's, and his name now appears first on the title page.

B. F. L.

TABLE OF CONTENTS

PAGE

Preface vi
List of Manuscripts x
Introduction xi
The Eyre of Kent—
Actions and Notes:
Account 1
Ael 2
Admeasurement of Pasture 2
Annuity 2
Cessavit 3
Common of Pasture 3
Cosinage 4
Covenant 9
Latest Presentation 15
Detinue of Charters 16
Debt 19
Deceit 60
Dower 62
Right 81
Ejectment from Wardship 88
Entry 92
Excommunication 185
Formedon 186
Warranty 202
Warranty of Charters 205
Imprisonment 214
Mesne 214
Table of the Statutes in Volume I 217
Table of the Statutes in the Present Volume 217
Table of the Forms of Action and of Appeals in Volume I . . . 218
Table of the Forms of Action in the Present Volume 218
Names of the Parties to the Actions and Appeals (other than anonymous ones) Reported in Volume I 219
Names of the Parties to the Actions (other than anonymous ones) Reported in this Volume 219
Table of Cases in Volume I 221
Table of Cases in the Present Volume 221
Index of Matters 229
Index of Persons and Places 237

LIST OF MANUSCRIPTS USED IN THE PREPARATION OF THIS VOLUME[1]

	Referred to as	YEAR BOOKS OF THE EYRE OF KENT OF 6 AND 7 EDWARD II
1	α	British Museum, Hargrave 210, ff. 49–71
2	$\alpha\alpha$	„ „ „ „ ff. 180–214
3	β	Cambridge University Library, Ff. III, 12; ff. 2–19
4	γ	Bodleian Library, Tanner 13, ff. 415–485
5	$\gamma\gamma$	„ „ „ „ ff. 119–141
6	δ	British Museum, Harleian 1062, ff. 13–31
7	ϵ	„ „ Additional 32086, ff. 6*d*.–13*d*.; 106–125
8	ζ	Lincoln's Inn, Hales MSS., 141, ff. 9–18, 22–47, etc.
9	η	British Museum, Cotton, Faust. C. VI, ff. 26–35
10	θ	Lincoln's Inn, Hales MSS., 45. ff. 32–72
11	κ	British Museum, Egerton, 2811, ff. 111–123
12	$\kappa\kappa$	„ „ „ „ ff. 1–21
13	λ	„ „ Harleian 453, ff 43–5; 1 *et sqq*.

The Abbreviation E.R. signifies in this volume the Roll of Juries and Assizes of the Eyre of Kent of 6 and 7 Edward II., and O.E.D. signifies the Oxford English Dictionary.

[1] See also the list of Manuscripts prefixed to Volume I.

INTRODUCTION

THE TABLE OF THE MATTERS.

1. Of the Cases in this Volume.
2. Of Bills in Eyre.
3. Of the Authorship of the Year Books.
4. Of some Miscellaneous Matters.
5. Of a Treatise on Mediæval French Orthography.

(1) Of the Cases in this Volume.

The first volume of the Year Books of the Eyre of Kent contained reports of the *Pleas of the Crown* and of the quasi-criminal cases falling under the titles of *Attaint* and *Trespass*. In this second volume are reports of civil actions under the titles of *Account*, *Aiel*, *Admeasurement of Pasture*, *Annuity*, *Cessavit*, *Common of Pasture*, *Cosinage*, *Covenant*, *Darrein Presentment*, *De Cartis Reddendis*, *Debt*, *Deceit*, *Dower*, *Droit*, *Ejectment from Wardship*, *Entry*, *Excommunication*, *Formedon*, *Guaranty*, *Guaranty of Charters*, *Imprisonment*, and *Mesne*.[1] A third volume will contain the remaining titles. This second volume, like the previous one, contains reports of cases that were certainly not heard during the Eyre of Kent of 6 and 7 Edward II. As to how they came to be included in Year Books purporting to be Year Books of that Eyre I have ventured upon some surmises in another part of this Introduction. Wherever they were heard they are instructive cases, and it has been determined to print them here.

Some few observations upon some of the reports hereinafter following will not be out of place in this Introduction. The two versions of *Hammil* v. *Chalon* (pp. 4–6) are not easy reading, nor do they appear to be quite consistent. Geoffrey Hammil claims certain land by a writ of cosinage, and relies upon the seisin of his cousin Robert. Counsel for the tenant replies that this Robert, though he died seised, was not 'last seised,' but left a daughter who entered by succession

[1] The reason of this alphabetical arrangement is explained in Vol. I, p. ci.

upon his death and was seised. This was, *prima facie*, a complete answer to Geoffrey's writ. But this daughter was a bastard, says Geoffrey's counsel, and so could not enter by succession. To this the other side objects that an allegation of bastardy is an allegation touching the 'right,' and the question of 'right' cannot be tried under a possessory writ, and the writ of cosinage is a possessory writ. SPIGURNEL J. and *Friskeney*—*Friskeney's* speech seems to have become part of SPIGURNEL J.'s in the second version—give reasons why the tenant's plea that Geoffrey's cousin Robert was not the last seised should not be accepted in abatement of the writ, and think the better course to be the vouching of the daughter by the tenant, apparently to give her an opportunity of warranting him. One of the reasons given is that this daughter is alive. 'If she were dead it would be otherwise.' At first sight this reads as though the daughter's death would have afforded some sort of reason, though not a conclusive one, for not vouching her. But there is probably more in it than this. The secular courts could not try the legitimacy of a living person. That was a matter in which Court Christian had exclusive jurisdiction. But they might try the legitimacy of a person deceased. If the plea of illegitimacy had been received it would have had to be referred to the Court Christian for adjudication, and the whole matter would have been indefinitely delayed. Counsel for the tenant thereupon consents to vouch the daughter. Counsel for the demandant thereupon counterpleads that the tenant himself was the first to abate himself upon the land after Robert's death—an allegation, in effect, that the daughter not having acquired seisin herself could not, even though she were legitimate, have delivered seisin to the tenant. *Passeley*, for the tenant, now replies that the daughter was seised and alienated; and upon that issue was joined. The first version breaks off prematurely, and we need the second to know what really happened. What the jury's finding was—if any there ever were—we are not told, and the record cannot be identified. But, as the issue was left, a verdict that the daughter was seised and alienated would abate the writ; a verdict to the contrary effect would have left the tenant without answer and so given the land to Geoffrey.

The case of *Buckland* v. *Leanore* on Covenant (p. 9) raises an interesting question as to how far a man is bound by the mere affixing of his seal to an agreement to which he is no party. John Buckland, the plaintiff, entered into an agreement with Peter the Mason that Peter should build two mills for him within a certain time. The agreement purports to be made between Buckland and Peter only. Peter recites in it 'for further security I add' such and such ones—Leanore and

three others. These four severally make themselves, but apparently by Peter's recital only, responsible for the whole performance of the agreement. They do, however, affix their seals to the agreement. Peter fails to carry out his covenant, and Buckland sues Leanore and the other three for damages. Leanore's counsel raises the point that his client is no party to the agreement; that all through it, it is Peter who speaks and not Leanore and the other three; and he asks for judgment of this objection. But SPIGURNEL J. at once brushes it aside. 'If a man by a writing confesses himself indebted to us, and the writing goes on to say "and for further security I procure such an one who binds himself," and this latter affixes his seal to the writing, how can you argue that he does not say the same thing as the other man says? He affirms it by the fact of affixing his seal.' (p. 10). And this, apparently in the absence of any proof that Leanore had ever had the contents of the agreement explained to him. In an anonymous case of debt reported on p. 57, where a woman is alleged to have bound herself by affixing her seal to a tally, BEREFORD C.J. asks her counsel: 'What do you say as to your seal attached to it?' and counsel replies: 'If I put my seal to an escrowet and write no letter, the fact of putting my seal there does not charge me.' And later on he puts in the plea 'not our deed.' The report gives us no *dictum* from BEREFORD C.J. on the point. Nothing is said in either report as to how a seal was proved; the particular seals in both cases being, apparently, admitted.

Pessindenne v. *Potter* (p. 12) is an action for breach of covenant which I mention here that I may complete the unfinished story of the report by further information obtained from the Record. Robert Potter is sued by Philip and Robert Pessindenne for a breach of covenant to protect certain land of theirs from devastation by the sea. After various arguments the action is dismissed because it is admitted that Philip and Robert hold in common with a third brother William, the non-joining of whom as a co-plaintiff is held to be fatal. A new action is at once commenced, with William joined as a third plaintiff, and the same facts are relied upon. Potter, however, has apparently 'got at' William, and he pleads that William is barred from bringing any such action by the fact that he has released and quitclaimed to him all right of action which he might have had in respect of this covenant.[1]

[1] 'Et quo ad predictum Willelmum dicit quod accio ei competere non potest in hac parte dicit enim quod idem Willelmus remisit et quietum clamavit eidem Roberto omnes acciones et querelas quas erga ipsum habuit racione intrationis predicte predicte terre et eciam occasione cujuscumque convencionis inter eos habite. Et profert quoddam scriptum quietclamancie sub nomine ipsius Willelmi quod hoc testatur et unde petit judicium.'—E.R. *m.* 166.

And he produces a document to this effect signed by William. William admits all that Robert says, with the result that, so far as William is concerned, Robert goes away *sine die*, and William is put into mercy for his false claim. But it seems that no amercement was actually extracted from William, seeing that he only appeared as a co-plaintiff because Potter said that he could not answer the other brothers unless he were joined with them.[1] Potter now goes on to answer Philip and Robert. It is no fault of his, he says, that the land has not been protected from the sea. Over and over again has he entered the land and commenced to make protective works, but the inrush of the sea has always destroyed what beginning he has made and prevented him from carrying out his agreement. To this Philip and Robert reply that Potter has never made the least attempt to protect the land from the incursion of the sea, and that the same is now submerged by reason of his neglect. Upon this replication issue is joined. A jury is ordered for a future day. Afterwards Philip and Robert *non sunt prosecuti*, and they and their pledges are in mercy, while Potter goes away *sine die*.[2]

Under the title *Debt* we have a large number of instructive reports. Several of these deal with actions brought by or against executors from which we can learn something of the intricacies of the mediæval law touching executors. Others report actions to recover debts incurred by married women while they were yet sole, and incidentally teach us when and after what fashion husband and wife should wage their law jointly, and when the husband only should wage it, though the action be brought to recover a debt incurred by the wife. Other reports tell us something of tallies and how to plead them, and how to disparage them as evidence when they are produced against us. In *Scott* v. *Beracre* we are reminded (pp. 25 and 27) that the pleadings in Court Christian must be in writing, while in the secular courts they

[1] 'Et predictus Willelmus in misericordia pro falso clamore etc. Set nichil de misericordia pro eo quod predicti Philippus et Robertus alias coram justiciariis hic tulerunt breve de eadem convencione versus eundem Robertum le Pot ad quod idem Robertus le Pot tunc dixit quod dictus Willelmus simul cum predictis Philippo et Roberto fratribus ejusdem Willelmi fuit pars dicte convencionis sine quo non potuit eis inde respondere etc.'—E.R. *m.* 166.

[2] 'Et quo ad ipsos Philippum et Robertum fratres ejusdem Willelmi [Robertus le Pot] dicit quod ob defaltum ipsius Roberti le Pot non remansit quin predicta terra pro porcione sua inclusa fuisset etc. dicit enim quod ipse sepius ad terram predictam accessit et eam includere incepit que quidem inclusio tociens per maris fluctuacionem dirruta et frussata fuit quod eam omnino perficere non potuit etc. et unde petit judicium etc. Et Philippus et Robertus dicunt quod predicta inclusio nunquam per predictum Robertum le Pot incepta fuit nec facta immo ob negligentiam ipsius Roberti le Pot predicta terra per fluctuationem maris superinundata est et hoc petunt quod inquiratur per patriam.'—*Ibid.*

are *ore tenus*. An incident in the anonymous action reported on p. 28 reveals the carelessness and want of system of the time in regard to the collection and safe preservation of official rolls. This particular case was apparently heard at Westminster, certainly not during the Eyre of Kent. A bond alleged to have been given under the provisions of Statute Merchant is disputed. The Court calls for the rolls of the Sheriff and Mayor, in which the execution of the bond, if it had been in fact executed, ought to be recorded. 'The Sheriff being dead, his heir sent the rolls, and said that he had no more of that year. And the Mayor said the same.' It was apparently only at the time of a General Eyre that anywhere throughout the country was any attempt made to collect such rolls and to put them into safe custody.[1] And it would seem that not even so much as this was done in the City of London. In an unedited Year Book of the London Eyre of 15 Edward II a case is reported during which the Sheriff's rolls were wanted. Staunton J. asked what became of the rolls of a sheriff who was removed from office; did he retain them himself, or were they taken to the Treasury? He was told that the Sheriff kept them. 'Of a truth then,' said Muttford J., 'they who bring action before sheriffs get but their labour for their pains.'[2] An interesting point is raised in *Bereham* (*Executors of*) v. *Twytham* (p. 29). A. covenants with one Isabella that he will, before a certain day, marry her daughter, and, within a month of his marriage, will grant Isabella herself a life interest in certain lands. And he further binds himself to pay £200 to Isabella in default of his carrying out his covenant. A. marries the daughter, and, three weeks afterwards, Isabella dies. A. had covenanted to enfeoff her within a month of his marriage. In the circumstances was A. liable under his bond? The arguments *pro* and *con* may be seen in the report. For the result of the case we have to go to the Record, which tells us that Isabella's executors were non-suited. In an anonymous case on p. 34 Bereford C.J. tells how and when a tally should be put in evidence; and in the following case on p. 35 counsel complains of the hardship of a tally being admitted in proof of a debt, for, he says, 'it is naught but a spindle on which there is nothing noted whereby you can support a claim; for here is naught but notches, and whether they stand for pence or marks or pounds no man can tell. A man may notch or carve these notches at his will or may shave them away without anyone knowing anything about it.'

[1] See vol. I, p. 22.

[2] Herui au visconte quant un visconte est oste lequel demoerunt ses Roules etc. en tresorie etc. ou oue ly meismes. *Le Visconte* Sire oue ly mesmes. Muttef donqes cels qi pledent devant les viscontes perdent malement lor travayle. *Hale MSS.* (Lincoln's Inn) 141, f. 48.

The anonymous case commencing at the foot of p. 39 raises the question whether the Ordinary is entitled to appoint an administrator or executor when one is already named in the testator's will. The executor appointed by the testator in his will was considered by the Ordinary to be too feeble to act, and he appointed another and endorsed his name upon the will. Bereford C.J. seems to have held that the appointment was valid, and that such executor was entitled to give a good receipt. Later decisions were to the opposite effect.[1] The anonymous case on p. 40 is interesting from the difference noted in the procedure when an executor is the plaintiff and when an executor is the defendant. In the former case the defendant may be put to his law, but in the latter he may not; and the reasons for this difference are set out. A case on p. 41 lays down that where four executors have been appointed by a testator three of them cannot sue without the fourth being joined for a debt due to their testator's estate, even when the fourth has not been granted administration: the reason being that an acquittance given by such fourth executor would have been sufficient to bar the other three from action. The anonymous case on p. 42 raises a nice point which seems to have been decided rather *de consilio curie* than by the rigour of the law. Friar Roger sued as an executor. Now in the first place it is to be noted that a 'religious' could not act as executor at all without the warranty of his Superior,[2] and, secondly, that a Friar, bringing an action, must name his Prior along with himself. There seemed, then, especially strong reasons why the defendant might urge that he was not bound to answer. On the other hand it was argued that if the Prior were named the writ would thereby abate, he not being an executor. The Court, recognizing the hardship that would ensue upon the rigour of the law being enforced, fell back upon equity[3] and ruled the writ answerable.

Almost every case of debt reported in the following pages is of special interest and invites some word of comment, but the limitations of space forbid reference being made here to more than one or two others. Two anonymous cases on p. 48 show the difference in procedure when a man and his wife are sued for a debt contracted by the wife when she was sole and when sued for one contracted by her after marriage. An attempt to oust Law Merchant from the Eyre is made

[1] See *Salkeld's Reports*, I, 299.

[2] 'Nullus religiosus permittatur executor existere alicujus Testamenti nisi Superior suus caveat pro suo Religioso hujusmodi quod sufficienter exequetur et fideliter reddat et integre rationem de residuis si quæ fuerint de damnis quæ per ipsum emerserint loci Ordinario absque difficultate qualibet respondebit.'—Lyndwood, *Provinciale* (ed. 1679), pp. 168–9.

[3] Cf. Glanville, VII, 1.

in *Bandon* v. *Anon* (p. 49). And note, too, in the report of this case, the specific statement that while the Eyre is sitting it is only before the Justices of the Eyre that a case originating in Kent can be tried.[1] In the report of the anonymous case commencing at the foot of p. 54 we have executors appointed by a will that has been destroyed in a fire suing for debt. No will can be produced, and their right to sue at all is contested. 'They proffer no writing to show that any right of action to claim this debt is vested in their persons.' After long argument, during which the *status* of an executor is discussed and Bereford C.J. says that a testament is not the will of the testator but the evidence of it, it is ruled that an averment by the executors that they are executors is sufficient to entitle them to be answered.

In *Ripple* v. *Ripple* (p. 58) we get a set of facts that border on comedy. Lawrence of Ripple is one of four co-executors of a will. In this will he was appointed an executor by the name of Lawrence of Ripple. It appears, however, that he was equally well known as Lawrence the son of Ralph. He was indebted to the estate of his testator. The three other co-executors want to collect the debt, but they cannot bring an action for it unless Lawrence, as fourth co-executor, is joined with them; so they join him with themselves and sue out a writ against him demanding the debt due to the testator's estate. But their draftsman did not quite know his business. In the writ Lawrence the plaintiff is described as Lawrence the son of Ralph; Lawrence the defendant as Lawrence of Ripple. Lawrence the defendant was better advised than Lawrence the plaintiff. His counsel at once takes the point that an executor named in the will is Lawrence of Ripple, and that no such person is joined as a co-plaintiff. Further than that one of the co-plaintiffs named in the writ is Lawrence the son of Ralph, and no such person was named an executor in the will. These objections were held good enough to abate the writ. Of course no such action could be brought now.

Several instructive cases of *Dower* are reported. *Cobham* v. *Cray* (*Right*) reported on p. 81 is interesting from the fact that during it the Justices declared that the whole duration of the Eyre was to be considered as but one day. The particular facts which elicited this declaration were these: Sir Henry Cobham had commenced an action in Bank against Sir William Cray. This was, as a matter of course, remitted to the Eyre. When it was called on Sir Henry said that he had not yet sued out the record of the proceedings in Bank. The Justices ruled that though Sir William could not be allowed to go away *sine die*, which would have amounted to non-suiting Sir Henry, he might

[1] See also vol. I, pp. xviii and 3.

go away till he was notified of the receipt of the record ; for, since the whole Eyre counted but as a single day, it was open to Sir Henry to sue out the record at any time he pleased during the Eyre. To the report of *Wyberd* and *Gilbert* v. *Bath* is appended (p. 83) an account of the election of jurors to serve as a grand assize. According to the regular procedure[1] four knights were summoned by the Sheriff *ad eligendum super sacramentum suum duodecim de legalioribus militibus de visneto tali etc.* But our reporters tell us that the four knights in *Wyberd* and *Gilbert* v. *Bath* were chosen by the parties themselves to elect sixteen knights and serjeants of themselves and others ; that these four knights then withdrew themselves from the bar ; and then, in the presence of the attornies of both the parties, who had a right of challenge, chose twelve to themselves—that is, one supposes, twelve in addition to themselves, making sixteen in all. This differs in two respects from what Bracton and Glanville say as to the procedure: as to the method of choosing the four electing knights, and as to the number of jurors serving on the grand assize, which our reporters appear to give as sixteen. Though it is certain that the Grand Assize consisted originally of twelve elected knights only, the later practice seems to have added the four electing knights to these, making sixteen in all. It is possible that the object of choosing an assize of sixteen in all was to allow for challenges, and that the assize that actually sat did not consist of more than twelve. There is a case in point in *Select Civil Pleas* (Selden Society) p. 86, which is not easily intelligible otherwise. Four knights are summoned to elect twelve—*ad eligendum xij. ad faciendum magnam assisam.* But these four elect not twelve but sixteen, whose names are given, and the names of the four electors do not appear amongst those of the sixteen elected.

In *Anon.* v. *Anon.* (p. 85) a false concord in the writ was held to be sufficient to abate it.

There are many cases of *Entry* in its various forms reported in the following pages, to only a few of which can reference be made here. In the note from the Eyre Roll on *Attewell* v. *Cobham* (p. 97) we get a very early instance of the practice of directing process to the Coroner instead of to the Sheriff when the latter is related by blood or marriage to the plaintiff. Neither Brooke's nor Fitzherbert's *Abridgment* gives any earlier authority for it than a ruling of *Touts les Justices* in Pasch. 22 Henry VI (17). The three versions of *Surbiton* v. *Pickle* (pp. 105–110) contain an interesting argument as to the vouchability of an attainted clerk committed to the Bishop's prison. The third version

[1] Bracton f. 331*d.* ; but read Glanville II, 12 to learn how far the regular procedure might be varied by leave of the Court.

says distinctly that the voucher was allowed, though the two other versions convey the impression that the Court was opposed to allowing it. In the same case is reported a quaint discussion as to the vouching of an unborn babe. From the report of the first anonymous case on p. 111 we note that a bailiff may not serve a summons in a plea of land. If he do, all the subsequent proceedings are null. The summons must be served by two substantial freeholders. The anonymous case on p. 116 where one Reginald is the demandant discloses some curious facts. Reginald brings his writ against a woman, then marries her and gets his recovery by reason of the default of his own wife. The wife, upon discovering her husband's strategy, procures a divorce from him, brings a writ of deceit, and recovers seisin of her lands. The anonymous case reported on pp. 142 and 143 raises a nice point upon cap. xl. of the Statute of Westminster II, which enacts that a widow shall not be delayed by the nonage of the heir who ought to warrant. But what is to happen when three parceners constitute but a single heir, and two of these three are of age and one is an infant? The Court was of opinion that the case came within the Statute, and the widow recovered her seisin.

The two actions of *Wellington* v. *Brockwell* (pp. 149–160) should be noted here. In both these actions Maud Wellington demands tenements by a *cui in vita* from William Brockwell, Margaret his wife, and Thomas his son. In the first action William Brockwell and his wife vouch James Bourne to warranty. Note that Thomas the son does not join in this voucher. James Bourne comes into Court and warrants and vouches over William Brockwell alone. William makes default after default so that the land is in danger of being lost. Margaret, his wife, then seeks, under the provisions of the Statute of Westminster II, cap. iii, to be received in defence of her right. It was obviously a case that came under the Statute, and the demandant's counsel were not able to persist in their opposition. In the second case matters were complicated by Thomas Brockwell joining with his parents in vouching James of Bourne, who came, as before, and warranted and vouched over William Brockwell alone. James Bourne's warranty included the warranty of Thomas Brockwell's right. Again, as before, William Brockwell makes default, and again Margaret, his wife, seeks to be received in defence of her right. Long arguments ensue as to the exact effect of the Statute. Then Staunton J. intervenes and points out that counsel on both sides have missed the really important point, for, he says, 'When William, Margery, and Thomas were warranted by James, they were warranted in Thomas's right, for it is Thomas who has the fee-tail by the provisions of the fine; and now the woman prays to be received to defend a freehold,

which does not seem consistent. For, if she were now received for such a reason, what would become of Thomas's warranty which is in the right? It would beat me, and would beat the wisest head in England, to find it again.'[1] Further than this, he said, the Statute did not apply to the present circumstances, but to a different set of facts. 'And as Margery's counsel understood that judgment would be given against them, Margery did not come and ask to be received.'

In *Baldwin* v. *Bakewell* (pp. 175–178) it is laid down that a tenant cannot enfeoff another to hold jointly with himself. Such a joint-tenancy can only be brought into being, in strict theory at any rate, by the tenant alienating to a third party, who can then give feoffment to the original tenant and to such other as this latter desires shall hold jointly with himself. But though a roundabout procedure of this sort is theoretically necessary if the second party is to have a good title, SPIGURNEL J. says that a sufficiently good estate may be got in a simpler fashion. If a tenant enfeoff another of a moiety of his land to be held in common and allow him to have seisin and then oust him, the latter can have an assize of novel disseisin and protect his estate by its finding.

It is noted on p. 205 that the principle of the Eyre is to expedite every man, and that dilatory tactics are such a contravention of that principle that, in certain cases at any rate, the mere adoption of them by a tenant is sufficient reason why he should forfeit his seisin. It is possible that in this characteristic of the Eyre lies the key to a difficulty in interpreting the meaning of the last paragraph of the report on p. 75. The correct expansion of the words *in compendio*[2] seems more likely to be *nest meus qe iter* than anything else that can be suggested; 'the delay is not greater (i.e. is of less importance) than the *iter*.' What the sentence as a whole seems to mean is that a refusal to allow the voucher would be the cause of delay. Delay is contrary to the principle of the Eyre. Therefore the voucher is allowed, even though the propriety of such allowance be questionable.

The point settled in *Scoland* v. *Grandison* (pp. 186–200) is that an action of *Formedon* cannot be brought upon a title which an assize of novel disseisin has found to be invalid. A condition precedent to bringing an action based upon such a title is the attainting of the jury that served upon the assize. Frank Scoland, later on in the Eyre, succeeded in attainting them[3] and so recovered his land. It appears from an entry in the *Coram Rege Roll* of Michaelmas, 8 Edward II, *rot.* 95, that William Grandison had the record of the attaint brought into the King's Court at Westminster by a *certiorari* and there took certain

[1] Pp. 155–156 *infra*.
[2] See Frontispiece, line 9 from the foot.
[3] See vol. I, p. 159.

exceptions with a view to having the attaint quashed. But the King again[1] interferes in Scoland's favour. He grants him his protection from further proceedings on the ground that he has gone to Ireland on the royal service; and the Court thereupon, without more ado, nonsuits Grandison.[2]

(2) Of Bills in Eyre.

The Year Books and Rolls of the General Eyres reveal to us a procedure which has been so long extinct and which continued for so comparatively short a time that all memory of it seems to have been lost for centuries past. Not a single authority, ancient or modern, that I have consulted—and I have searched wherever I thought instruction might be found—tells us anything of it. I refer to the procedure, in certain cases, by bill instead of by writ.[3] Before we begin to find out what we may as to what this procedure by bill was, it will be well to clear the ground to some extent by saying what it was not. In the first place, then, these bills in Eyre in lieu of writs were not the bills mentioned in the Roll recording the Trials of the Judges and other ministers of the King before the Commission instituted by Edward I. I know no other place where the presentation of bills of the same kind as those mentioned in this Roll is referred to, and this possibly unique reference to them is so interesting that I may be pardoned a short digression by way of comment and explanation. It will be remembered that Bracton tells us that the Justices of the Eyre, immediately after the address delivered by the presiding judge, retired to some place apart where they privately instructed and exhorted the *Busones*.[4] Let me set out the exact words. They, the Justices, are to tell the *Busones* that the King and his council have given directions that not only every Knight but every person of fifteen years and upwards shall swear that he will not harbour nor connive with outlaws, murderers, or robbers, nor with the harbourers of such, but will cause all such of these as they may know of to be attached, and will give information thereof to the Sheriff and his bailiffs.[5] Now one of the charges against Solomon of Rochester which were investigated by Edward I's Commission was that while he was one of the Justices of the Suffolk Eyre of 1286 he falsely and

[1] See vol. I, p. lxxxiii.

[2] Ideo idem Franco per proteccionem predictam sit inde sine die etc.

[3] Examples of plaint by bill will be found on pp. 19, 24, 28, *et alibi*.

[4] See vol. I, p. xxvii.

[5] 'Omnes tam milites quam alii qui sunt quindecim annorum et amplius jurare debent quod utlagatos murdritores robbatores non receptabunt nec eis consentient nec eorum receptatoribus, et si quos tales noverint illos attachiari facient et hoc vicecomiti et ballivis suis monstrabunt.'—Bracton, *De Corona*, f. 115 *d*.

maliciously procured that certain bills should be presented charging one Henry of St. Edmunds with receiving felons.[1] And the Roll further gives us this account, in Solomon of Rochester's own words, of the manner of presenting these bills. 'The custom is,' he says, 'that anyone during the Eyre may present a bill of this kind to any of the Justices, whose duty it is to receive it and hand it to the "dozen" sworn to the Pleas of the Crown, so that if its allegations be true they may find them so by their verdict, and, if they be not true, that they may throw the bill out.'[2] The method of the presentation of these bills and the tenour of them make it clear, I think, that they were the bills referred to in Bracton's account of what should be the Justices' instructions to the *Busones*. As this connection has not hitherto, I believe, been pointed out, it seems worth while going a little out of one's direct way to call attention to it here.

Nor had these bills in Eyre with which I am now concerned any connection with the ancient bills mentioned by Lord Chief Justice Hale in his *Discourse concerning the Courts of King's Bench and Common Pleas*.[3] Apart from other proof this is made quite clear by what Lord Hale tells us of the matters with which the particular bills of which he is speaking were not concerned. Neither have they anything to do with that special kind of bill which came to be known by the generic title of 'bill of Middlesex.' What, then, were they? As a first step towards answering the question I will say something about the material bills themselves, of which some hundreds are still preserved in the Public Record Office. In date they appear to range from Edward I to Edward III. They are formed of slips of parchment varying in size with what had to be written upon them. Some of them are barely as wide as is a man's little finger. They are almost invariably written in Anglo-French. A very few are in Latin. With exceedingly few exceptions they are addressed *A les Justices nostre Seygnur le Roy*. One that I have seen is addressed *A Justices nostre Seygnur le Rey erranz a Stafford*. Another begins *Sire* simply, though later on in it Sir John Berewick is addressed by name. Not a single one of them, be it noted, is addressed to the King nor to his Council nor to

[1] 'Falso et maliciose ad predicti Henrici confusionem quasdam billas continentes quod dictus Henricus quosdam felones domini Regis receptasset coram se et sociis suis procurauit presentari.'—*State Trials of the Reign of Edward I*, edited for the Royal Historical Society by T. F. Tout and Miss Hilda Johnstone; 3rd *Camden Series*, vol. IX, p. 68.

[2] 'Solomon de Rochester dicit quod in itinere justiciariorum talis est consuetudo pro pace observanda quod quicumque de populo huiusmodi billam obtulerit cuicumque iusticiario maiori vel minori idem iusticiarius illam billam debet recipere et tradere eam duodenis iuratoribus ad capitula corone ita quod si verum sit quot in ea continetur ipsi presentant illud in veredicto suo et si non sit verum quod deniant illam billam.' *Ibid.* p. 69.

[3] Hargrave's *Law Tracts* (1787), p. 363.

the Chancellor. The vagueness of the address and the frequent absence of any date make it impossible to say with certainty that all these bills were presented in Eyre, though when we get any trustworthy indication of time in connection with venue it usually seems to point to such a presentation. All these bills appear to be country bills, and I feel no doubt that if any of them were not presented in Eyre—in a General Eyre, to be quite accurate—they were at any rate presented in those less comprehensive Eyres of 'Justices erranz' commissioned to hold common pleas to whom the King gave also authority 'to hear . . . any complaints whatsoever and to make fitting amends therefor.'[1]

These bills embody complaints of infractions of almost every kind of personal right, complaints of debt, detinue of money, goods and charters, trespass, including what we should to-day indict as burglary and assault with intent to kill, breach of covenant, conspiracy, ravishment of ward, and so on.[2] The complaints are often couched in the simplest language, and consist of the barest statement of the material facts; *e.g.* 'Richard of Reyton complains of Roger of Preynghose that he unjustly detains from him a horse worth fifteen marks.'[3] This is all; there is no address to Justices nor anyone else; no prayer for a remedy. Here is another, a bill for debt: 'To the Justices of our Lord the King John Graneges prays that his debtors whose names are inscribed be summoned to answer him of their debts. Gregory le Knotte, chaplain, owes him eleven shillings on one account. Roger the Villain owes him five shillings on one account.'[4] In other bills the complainants set out the wrongs they have suffered with much detail. Here, as an example of this, is the story and complaint of one John Fesrekyn, of which I am conscious that I make no adequate translation into English. The pathos of its illiteracy is untranslatable. 'Dear Sir, of you who are put in the place of our Lord the King to do right to poor and to rich, I cry mercy. I John Fesrekyn make my complaint to God and to you, Sir Justice, that Richard the carpenter that is clerk of the bailiff of Shrewsbury detains from me six marks which I paid him upon receiving from him an undertaking in writing by which he bound himself to find me in board and lodging in return for the money he had from me; and

[1] Commission to hold Common Pleas in Cumberland, Westmorland, and Northumberland.—*Patent Rolls*, 6 Edward I, *m.* 6.

[2] Two of our MSS. (α and β) note that action may be taken by bill without writ for disseisin done during the Eyre and for attaint touching the same. See vol. III.

[3] 'Ricardus de Reytone queritur super Rogerum de preynghose quod injuste detinet ei unum equum precii quindecim marcarum etc.'—*Assize Rolls* (P.R.O.) 1552, *m.* 77.

[4] 'A Justices nostre Seynur le Rey prie Johan Graneges ke se dettors ky nouns sount enscrites seyent somouns a respoundre a ly de sa dette.

'Gregorie le Knotte chapelyn ly deit xj.*s.* pur j. tayle.

'Roger le vileyn v.*s.* pur j. tayle.'

he keeps not what was agreed between us, but as soon as he had gotten hold of the money he abandoned me and constrained my person[1] and gave me a scrap of bread as though I had been but a pauper begging his bread for God's sake, and through him I all but died from hunger. And for all this I cry you mercy, dear Sir, and pray, for God's sake, that you will see that I get my money back before you leave this town, or else never shall I have it back again, for I tell you that the rich folk all back each other up to keep the poor folk in this town from getting their rights. As soon, my lord, as I get my money I shall go to the Holy Land, and there I will pray for the King of England and for you, by your name, Sir John de Berewick; for I tell you that not a farthing I have to spend on a pleader; and so for this, dear Sir, be gracious to me that I may get me my money back.' The original text runs as follows: 'Cher sire joe vus cri merci issi cum vus estis mis en lu nostur seinur le Roy pur dreit fere a poueris e a riches. Joe Johan Fesrekyn face pleint a deu e a vus Sire Justice ke Richard le Carpenter Clerk du bayli de Salopesburie ke le vaundist Richard me de teent .vj. mars le queuz Joe li bayla par escrit ke il meme Richard moy Johan duce trouer me sustinaunce pur le deners le queus il resu de moy e ne fe mie cum couenaunt fu entre nous mes ausi tot com il auoit le deners il me desoula e me fit sere par le trunc e me dona un leyke de pain ausi com ce fu un pouere homme ke demaunds un pain pur deu e me morit pres de feim. E pur ce Cher Sire Joe vus cri merci pur deu ke vus me facers auer me deners avaunt ke vus partus ors de sete vile autrement ne recouerai jammes me deners ke sachers le riche gent tendrunt a semble ke le pouere gent nauerunt nul dreit en sete vile. ausi tot moun seynur ki Joe ai me deners Joe me vois en le tere seint e priera pur le Roy de Engletere e pur vus nomement Sire John de Berrewyke. ke sachers ki Joe nai dener ne mayl pur pleyter. E pur ce Cher Sire ei merci de mey ki Joe ei me deners.' This bill bears the endorsement *Cognoscit et concordati sunt per licentiam,* so we may suppose that John recovered at any rate a substantial portion of his 'deners' from the bailiff's clerk; and if he afterwards reached the Holy Land I hope that he did not forget his promise to Sir John Berewick. The date of this bill is almost certainly 20 Edward I. It may be noted here that the contract entered into between John Fesrekyn and Richard the Carpenter does not seem to have been an unusual one at the time.

Sometimes we find a complainant making half a score or more plaints against as many people by one and the same bill. Here is an example: 'These be indebted to Ralph of Huntingdon who prays the Justices

[1] Probably with a chain round it. The use of *trunc* for the living body is uncommon but warrantable.

of our lord the King that they be summoned to do him right'—'*Ces sunt les dettors Rauf de Huntingdon des queus il prie remedie a Justices nostre seynur le Rey ke il seyent somouns a respondre a ly.*' Then follow eleven names with sums varying from twenty pence to ten shillings debited to them respectively.

These bills almost, but not quite, invariably pray a remedy. Many of them pray a remedy 'for God's sake'—*pur deu.* Others pray it *pur deu e pur vos almes*; others *pur vostre charite*; *pur lamour Jesu Criste e pur lalme la Reyne*—'for the love of Christ and the soul of the Queen.' Others again 'for God's sake and the soul of the Queen.' One Alice ends her plaint by bill for detinue of goods and money with these words: *Dunt ele prie remedie pur deu e pur vostre alme si vous plest e pur la alme la reyne si vous plest*—'for God's sake and your own soul's sake, if it please you, and for the Queen's soul's sake, if it please you.' Most, at any rate many of them, bear evidence of being the petitions of very poor people. Robert Goodrich and Alice his wife pray a remedy *pur deu e pur lalme la Reyne* because they are so poor that they can get neither counter nor pleader: *kar eus sunt issi enpouerz pur ceo ke eus ne poent auer countur ne pledur.* One Adam and his wife complain that by this trespass they have been reduced to poverty and beggary: *kar verrement cher seygnur levendit Adam e sa femme oue ces ij. enfans puys en fa unt este e uncore sunt par cel trespas e baterie poures è mendinans.* Another complainant by bill, who has had his cattle seized for failing to meet his liabilities to one William from whom he has borrowed money, prays the Justices to take pity upon a poor yeoman in the matter of the wrong that has been done to him by this same William. The very illiteracy of the language of many of the bills is further evidence of the inability through poverty of the complainants to obtain expert assistance. It would be a matter of much interest to know by what sort of people these bills were actually written. The complainants themselves in most cases were probably unable to write; yet these bills were almost certainly not the work of men whose business in life was to draft legal documents. In an age when so few could write some sort of professional letter-writers must almost certainly have existed, and one may hazard the guess that it was by one of these that many of these bills were actually written upon the direct instructions of the complainants. But whoever wrote them they have besides their legal interest another very special one in showing us, as they do, the sort of Anglo-French that was written and spoken by the more illiterate classes in the thirteenth and fourteenth centuries. This secondary interest has led me to quote more largely from them than I might otherwise have done. Again, some of the bills that contain nothing on the face of them

to show that they set out the complaints of very poor people are marked *Affidavit quia pauper* or *Plegii de prosequendo per fidem quia pauper* instead of the more ordinary *Plegii de prosequendo A. et B.* Our evidence, however, does not allow us to go so far as to say that procedure by bill was the exclusive privilege of poor complainants, though there is no positive proof that it was not so.

Complainants by bill do not seem to have been tied to any special form, while form was the very essence of a writ. It was not even necessary, as we have seen, that the complaint should be formally addressed to anyone or that a remedy should be formally prayed. These things the Court would take for granted. It is sufficient if the complainants set out in the baldest fashion that some one owes them some money or has done them some wrong. But the facts which will determine the remedy to which the complainant may be entitled ought, it appears, to be distinctly stated ; though, if they be not, it is open to the Judge to have the complaint amended *viva voce* by the complainant. This seems plainly shown by the report of a case in the Eyre of London of 15 Edward II. Here one Agnes complained by bill that, having been committed to Newgate Gaol as the result of a bill of trespass brought against herself, there to remain until she had made satisfaction in the sum of fourteen shillings and some fine in addition, the gaoler had confined her in the prison dungeon and had taken from her forty-eight shillings ; but the bill omitted to say how long she was confined in the dungeon and when and where the forty-eight shillings were taken from her, and what damage she had sustained. Staunton J. thereupon questioned her as to all the matters wherein the bill was defective, and then made the defendant answer them as fully as though they had been in the bill.[1] Such omissions would have been immediately fatal to a writ. A consideration of the dates in connection with this case seems to give some confirmation to the belief that these bills could be brought only in Eyre. The date of the London Eyre at which Agnes brought her bill of complaint against Edmund the Spurrier, formerly gaoler of Newgate, is 1321.[2] Now in February 1319 this same Edmund

[1] 'Agnes de Warr se pleint par bille de Edmund le Leimer qe la ou un B. auoit recouery vers lauant dit Agnes xiiij.*s.* pur un plee de trespas en le Gilde halle de Londres pur quay meisme cesty Agnes fust comande a la prison de Newgate illoques a demorer tant qele ust fait la paye a la partie et fait assetz a la Courte etc. meisme celuy Edmond adonqes Gaoler de Newgate la mist en la parfound de la prisone et illoqes prist de ly .xlviij.*s.* et ne fist mie mencione pur cum bien de temps ele fust detenue en le parfond etc. ne a quel iour ne a quel an ne quel lieu les .xlviij.*s.* furent paiez ne de quel damage. Hervy enquist de la feme per opposisionem de tous les articles auantditz dount la bill fust defectif et puis fist la partie a ceo respondre auxi cum il ussent este contenuz en la bille etc.'—*Hale MSS.* (Lincoln's Inn) 141, f. 48.

[2] *Annales Paulini* (Rolls Series), p. 290.

was deprived of his office of gaoler by a Commission of Justices who were appointed by the King *ad inquirendum de transgressionibus ballivorum Londinie.*[1] It must therefore have been in the February of 1319 at the latest that Agnes's ground of complaint arose, and she apparently has to wait till the Eyre, at least a couple of years later, before she can bring her bill. The dungeon in Newgate, it may be noted in passing, seems to have been a recognized engine of extortion in the times of which we are writing. Nicholas of Cerne, to give another instance, complained before Edward I's Commission that William of Brampton, one of the Justices of the Common Bench, had caused him to be imprisoned in this dungeon until he consented to give certain mills in Tempesford to the Abbot of Stratford.[2]

But though much licence is permitted to a complainant as regards the form of his bill he must not presume too far and talk nonsense. And this we learn from the case of one John of Tattersall who complained, during the Eyre of London of 15 Edward II, that he had bailed a locked chest containing money to one John, a goldsmith, for safe custody; and that John the goldsmith and another John 'by force and arms took and broke the aforesaid chest, and took and carried away the money etc.'[3] But the Court could not understand how anyone could by force and arms and against the peace carry away what was already in his own possession, and so refused to call upon the defendants for an answer, and that more especially so as it was open to the complainant to bring a bill for detinue. The doctrine of 'breaking bulk' was yet to come.

I can find no trace of any statutory authority for these bills, yet their presentation and reception are provided for by the Justices in Eyre, and we note that, as in the case of procedure by writ, those who bring plaints by bill must find pledges that they will prosecute their complaint. All this the Year Books of Eyres make plain. I extract two passages from them showing this. An account of the preliminary proceedings in the Eyre of Nottinghamshire of 3 Edward III tells us

[1] *Annales Paulini* (Rolls Series), p. 285.

[2] 'Idem Nicholaus queritur de Willelmo de Bramptone quod iniuste fecit ipsum imprisonari apud Neugate in profundo carcere ad instanciam Abbatis de Stratford et propter munera sua: et ibi detentus fuit nec exire potuit quousque concesserat quod Abbas haberet molendina in villa de Temesford.'—*State Trials of Edward I*, p. 33.

[3] 'Johan de Teteshale se pleint par bille qe la ou il auoit baillie une Cofre sere de deinz la quele furent .xl.*li.* a un Johan Orfeure de L. agarder lauant dit Johan Orfeure e Johan de bretham a force e armes lauantdit Cofre pristrunt e embriserunt e les deners pristrunt e emporterunt etc. E pur ceo qil ne poet estre entendu qe home poet a force e armes en contre la pees emporterunt chose qest en sa garde de demeyne e bille de detenue etc. luy ust seruy proprement en ceo cas il ne fut pas respondu.'—*Hale MSS.* (Lincoln's Inn) 141. f. 50*d.*

that ' then was cry made that all those who wanted to complain by bill should deliver their bills to the Sheriff and find pledges to prosecute their complaint.' [1] Another Year Book of the same date, narrating the preliminary proceedings in the Eyre of Northampton, says that ' it was then cried that all those who wished to bring plaint by bill should deliver their bills to the Sheriff and find pledges for the prosecution of their plaints ; and the Sheriff was bidden to have three clerks, one to carry out the commands of the Justices hearing common pleas, another to be in attendance upon the Justices hearing bills, and the third to be in attendance upon the Justices hearing the pleas of the Crown.' [2] We gather, too, that plaints by bill were heard by a single judge.[3]

To sum up, so far as we have gone we find that these bills are addressed to the Justices of the King ' who are put in the place of the King to do justice.' They are largely used by very poor people. No rules as to form affect them, so that, no expert knowledge being necessary, they can be framed and presented by anyone who can write or can get another to write for him. There is no evidence that any fee was payable on the presentation of a bill, as it was on the purchasing of a writ, but there is conclusive evidence that the way of the very poor man to the ear of the King's Justices was made easy for him. Now to what does all this point ? Surely to the immemorial belief that inherent in the King are the right and the power to remedy all wrongs independently of common law or statute law and even in the teeth of these ; the right and the power, in fact, to do as he likes, whatever hard law and still harder practice may dictate ; and the hope and the trust that, his own personal interests being in no way concerned, he will right the wrong and see that justice is done. And the Justices of Eyre were in a very special sense impersonations of the King who had received from the King not only authority to hold all pleas, but, further than that, authority to hearken to and to give amends for any complaint that should be brought by any against any other.[4] I think that there can be no

[1] ' Puis fut crie qe touz iceus qi pleindre se voudrent par bill qe il liuerassent sus lour bill au viconte e qe il troiassent plegges de sure.'

[2] ' Pus fut comaunde qe touz ceus qi pleindre se volent par bille liuerent lurs bill al viconte e trouvent plegs a suire e comaunde fut al viconte qil ust iij. clers un a fere execucions des comandemenz des Justices a communs pletz un altre deuant les Justices qi serunt sur les billes le terce de estre entendant as Justices de la Corone.'—*Tanner MSS.* (Bodleian Library) 13. One of the Year Books of this Eyre of Kent (β) has a note as follows : ' Si bille ne seit mys en court a pleis de corone criez la partie ne serra mye respoundu.'—' If a bill be not presented in court before proclamation is made of the trial of the Pleas of the Crown the complainant shall not be heard.'

[3] This appears from Richard de Boilande's case in the *State Trials of Edward I*, p. 6. ' Predictus Ricardus solus sedebat ' to hear and determine a plaint by bill.

[4] See vol. I, p. 4.

doubt that these bills are the very beginning of the equitable jurisdiction. Consider this case before Hervey of Staunton in the London Eyre of 15 Edward II. Is it not the complete exaltation of the equitable principle over rigid law? A complainant brings a bill of account. The wife of the defendant comes into court and tells the Judge that her husband is paralysed and can neither come to the court nor speak, and she asks that the proceedings may be stopped. Then says Hervey of Staunton to the plaintiff: 'If so it be as this woman has told us let the plaint drop, and you will have your money paid. If you persist in going on, and we find that this woman is telling us the truth, it shall cost you dear.'[1] As yet it is only to his Justices of the Eyre that the King has lent so much of his *persona* as will enable them to do abstract justice in the failure of, or in spite of, common law and statute law. Hereafter the same power will accrue to the King's Justices sitting at Westminster, and later yet will be withdrawn from these to become the special and characteristic appanage of the Court of Chancery and the warrant for its equitable jurisdiction.

These bills, as we have seen, were delivered to the Sheriff, just as writs were delivered to him, but they differed from writs in that they were not addressed to him. The complainant was in most cases called upon to find two pledges for the due prosecution of his complaint. If he were too poor to have friends able to take upon themselves this responsibility he was allowed to make oath, but of exactly what we have no evidence; but this oath, whatever it might be, was accepted in lieu of the customary two pledges. The defendant was then summoned by the Sheriff to appear in Court and answer the complainant. If the defendant did not appear the same steps were taken to compel his attendance as were taken in similar circumstances under a writ; and, if all these fail, then we have finally, just as in the case of ultimate default in appearance to a writ, the order for his exaction and outlawing. All this we gather from the endorsements which appear on many of these bills. If and when the defendant appears he makes what answer he can. *Placitavit quod non est culpabilis negat totum et ponit se super patriam, Dicit quod nihil contra pacem fecit* are examples of general pleas. Sometimes the defendant comes betimes to terms with his adversary, and the bill is endorsed *cognoscit et concordati sunt.* Sometimes the complainant drops his bill, and the endorsement is *Retraxit per licentiam* or *Licentia recedendi.* If the defendant's plea be of the

[1] 'En une bille dacount la femme celz vers qi la suyte fut fait vint a la barre e dit qe son baron fust malades en la parlesye issi qil ne porra aler ne parler e pria qe la suyte cessat. Heruy. si issi soit com la femme ad dit cesse la suyte e vous averetz vostre bille quite e si vous ne volez e nous poems trouver qe la femme dit verite il vous custera.' *Hale MSS.* (Lincoln's Inn) 141, f. 51.

nature of a joinder of issue he then puts himself upon a jury, or the Court orders one to be impanelled. If the answer be not a direct joinder of issue the complainant replies, and the hearing runs the same course as though the proceedings had been by writ. All this is plain from the endorsements, which, however, are not nearly so complete as one would wish them to be. Very many of the bills bear no endorsement at all. One gathers that they were heard before a single judge, and an interesting point as to the joint responsibility of all the Justices of an Eyre for the malfeasances of one of them once arose out of this fact. Richard de Boiland was charged before Edward I's Commission with having unlawfully imprisoned William of Durnford against whom proceedings had been taken by bill in the Eyre of Gloucestershire. Richard said that he ought not to answer without the other Justices associated with him in the Eyre: '*sine sociis suis qui fuerunt secum in ultimo itinere.*' But William demurred to this objection as not being based upon sound law. The proceedings, he argued, were by bill and not by writ, and consequently the responsibility for what was done was Richard's responsibility alone and was not shared by the other Justices. And then he specifically says that Richard sat alone.[1] William's exposition of the law seems to have been accepted, for no more is said about the other Justices of the Eyre, and Richard is left to himself to make the best defence he can. In this same report we find noted another interesting point in connection with bills in Eyre, which, though the question raised seems to have come to nothing, should find a place here. William complains that when in the original trial before Richard he objected that he ought not to be called upon to answer a bill of imprisonment unless such imprisonment had taken place since the summoning of the Eyre, for that process in respect of imprisonment before that time ought to be by writ,[2] Richard refused to sustain the objection; and the Commission seems to have upheld Richard. I cannot discover any ground for William's objection, but we can hardly suppose that he would have taken it unless he had been able to adduce some sort of authority for it.

[1] 'Et Ricardus venit et dicit quod non debet respondere sine sociis suis qui fuerunt secum in ultimo itinere illo. Et predictus Willelmus dicit quod tamen respondere debet eo quod querela illa facta fuit de ipso Willelmo per billam et non per breve unde dicit quod fuit factum suum proprium et non sociorum suorum. Et dicit quod predictus Ricardus solus sedebat.'—*State Trials of Edward I*, p. 6.

[2] 'Cum idem Willelmus coram eodem Ricardo dixit quod predicte querele de imprisonamento respondere non teneretur sine brevi nisi factum fuisset infra summonicionem itineris illam responsionem sibi allocare noluit.'—*Ibid.* p. 5.

(3) Of the Authorship of the Year Books.

In the Introduction to what I, in common with everyone who is interested in these matters, am sorry to be told is the last volume of Year Books[1] which Mr. Pike will edit, he gives us out of the fulness of his knowledge much interesting information as to their origin and development. They were, he thinks, written by the clerks of the court,[2] though not by these *qua* clerks. They were unofficial reports made by officials of the courts in their private time. To this opinion Mr. Pike has mainly been led—at least so I read him—by the loyal persistence of his belief that there must be some foundation of truth in the old tradition that the Year Books were the work of official and paid reporters appointed by the Crown—a tradition now so sufficiently discredited that no one thinks of wholly accepting it.[3] And so, unwilling to treat it as a mere fable based upon no substructure of truth, Mr. Pike formulates a theory which seems to him to 'reconcile the words of Plowden with the words of Blackstone so far as the collaboration of four responsible persons is concerned. They are collaborating not to draw up reports, but to enter records; but the persons who entered the records may well have been the persons who drew up the reports, though no longer acting in concert, and no longer acting officially. This supposition is in harmony with all the facts with which we are acquainted, and absolves Blackstone, on the one hand, and Plowden, on the other, from the charge of misleading their readers by pure inventions. In some generation previous to theirs some one had truly said that the Rolls were prepared by four paid officials, three of whom were prothonotaries, and someone else had said, not untruly, that reports were the work of clerks or prothonotaries. When the two statements were rolled into one they came out in the words of Plowden or Blackstone.'[4]

No one differs lightly from Mr. Pike on any question touching the Year Books, but it is a hard saying that bids us accept a theory of

[1] *Year Books of Edward III* (Rolls Series), year XX, pt. 2.

[2] Thus differing widely from Maitland who believed the earlier ones, at any rate, to be the work of apprentices of the court and law students, and from Sir Frederick Pollock, who holds the same opinion. See his *The Genius of the Common Law* (1912), p. 24.

[3] 'In the face of these facts we cannot accept the tradition derived from a report on hearsay by Plowden (if indeed Plowden was speaking of our Year Books at all, which I gravely doubt) and magnified by Bacon's and Coke's acceptance, that the Year Books were the work of official and paid reporters appointed by the Crown.'—Sir Frederick Pollock, *First Book of Jurisprudence* (3rd edition 1911), p. 300.

[4] *Ibid.* p. lxxi.

their origin that is distilled from what he himself allows to be, at best, a muddled confusion of the imaginary statements of two entirely unknown persons, born of inference only, who lived in some generation previous to Blackstone and Plowden. What other evidence Mr. Pike advances in support of his case strikes one rather as allegations in justification of a continuance of belief that some substantial truth lies in the old tradition than as independent arguments proving anything material either one way or the other.[1] Still, if such a theory smoothed away all difficulties and were proof against all objection except the flimsiness of its foundation, one would not be inclined to insist too much upon that one weakness, serious one though it be. But does it smooth away any difficulties at all? Does it not rather raise new ones? Let us suppose that the Year Books are in fact what Mr. Pike believes them to be, the unofficial work of officials of the courts. By what special notes should we expect such a Year Book, the work of an official of the court, of a legal expert with full access to the Rolls, to be characterized? In the first place, looking upon it as a whole, we should be inclined, I think, to expect that such a Year Book would be based upon some definite plan conceived to serve in a better way than another some definite purpose; that it would be a collection of reports of cases in the language in which they were heard, consistently supplemented or unsupplemented by extracts from the Record. At any rate we should expect to find that the cases were reported in some sort of chronological order if the reports were compiled daily from the clerk's daily notes, as Mr. Pike suggests that they were. We should still more certainly expect to find that the reports included in such a Year Book were reports of cases that were in fact heard in those courts and during those sittings or commissions in which and during which they are reported if not by an official reporter at any rate by an official reporting as having been heard. Recognizing the impossibility of the reporter giving us even the barest note of every case that would have borne reporting and the consequent imperative necessity he was under of omitting much that would have tended to edification, we should expect to find him using the space at his disposal with at any rate such an intelligent economy as would prevent his giving us two fairly full reports of one case, varying from each other in no detail of the slightest importance. We should not expect to find in such a Year Book the variants and inaccuracies and omissions in respect of the names of parties and places that are manifest in such Year Books as we have them.

[1] Upon this and the whole question see Dr. Holdsworth's article in *The Law Quarterly Review*, vol. XXVII, p. 278.

Such are some of the characteristics which it seems we might reasonably expect to find marking a Year Book produced by an official of the court. It will need no deep study of the pages of this and the previous volume of the reports of the Eyre of Kent to discover how entirely they fail to bear out such expectations.

First, as to plan. What plan is there? There seems, indeed, to be none, not even as to the language in which the reports shall be couched, for though the reports in Anglo-French greatly outnumber the reports in Latin these latter are by no means absent from the Year Books of this Eyre of Kent. Sometimes, even, the same Year Book will give us two reports of one case, one in Latin and another in Anglo-French. It is difficult in this to see the work of an official of the court, and especially of an official of the court working under the conditions which Mr. Pike supposes him to be working under.[1] Such a clerk would find it sufficiently difficult to make an adequate note in one language for subsequent expansion. He would scarcely attempt to do it in two. Though these duplicate reports in the same Year Book in two languages are exceedingly rare, yet the fact of their occurring at all seems to militate very strongly against a belief that they were both the work of a clerk of the court who had quite as much on his hands as he could cope with without going out of his way to make notes for a duplicate report. It is true that, in most cases, but by no means in all, what I have called just now a report in Latin is not, strictly speaking, a report but merely an extract from the Record. But the occurrence of two reports in Anglo-French of one case in one Year Book is almost more unlikely to be the work of a single overworked clerk of the court than is the occurrence of a report in Anglo-French and of the Latin extract from the Record, for the latter may have been considered a useful supplement of the latter, and we cannot allege any such reason in explanation of the appearance of the duplicated reports in Anglo-French. The most careful examination and comparison do not disclose any reason why, if each of these Year Books be the independent[2] work of some one clerk of the Court, he should in a few cases only have supplemented his report by an extract from the Record. Such of these extracts as we find here and there in the Year Books supplementing the reports throw no unusual light upon these latter. There is no discoverable reason why if given in these instances they should not be given in all; why if withheld in the great majority of cases they should be given in these few.

[1] *Year Books of Edward III*, year XX, pt. 2, p. lxxvi.

[2] Of course I mean here what we may call the original Year Books, not the many copies which have been made of them.

Then again, consider in these Year Books of the Eyre of Kent at any rate, the arrangement, the order, of the reports. These Year Books vary so widely amongst themselves as to the order in which they report the cases that any attempt to discover the real chronological order in which they were called on was soon found to be hopeless. But if we suppose that these Year Books were in fact the work of the clerks of the court, produced by the daily expansion of their daily notes when each day's sitting was over, should we not find that the order in which the cases are arranged was very much the same in all the Year Books reporting the proceedings of any particular Eyre; and should we not find them following to a large extent the order of the cases on the Roll?

Yet again. It seems probable, almost certain, that of some cases we have a greater number of independent reports [1] than of clerks of the court. How many clerks were there in a court? Mr. Pike gives us[2] his authority for stating that there were at least three clerks in the Common Bench. But is there any evidence to show that these three or possibly more were all on duty at one and the same time and in one and the same court, recording the same case? To account for the number of seemingly independent reports that have come down to us of some cases we should need to have more than three clerks making notes at the same time of the same case if each of these reports be the work of a clerk of the court. I may note here for whatever it may be worth that, in Eyre at any rate, there were clerks and chief clerks; though how many of each I cannot say. But that there were these two ranks we have certain knowledge from a report on p. 139 of the first volume of this Eyre of Kent, where we are told that upon 'firm peace' being granted to one who had received the King's conditional pardon each clerk was to have a pair of gloves, and the chief clerks two shillings. In an unedited Year Book of the Eyre of Northamptonshire of 3 Edward III, now in the Bodleian Library,[3] we are told that the Sheriff was bidden to appoint three clerks: one to execute the commands of the Justices hearing common pleas, another to attend upon the Justices hearing bills, and the third to attend upon the Justices hearing Crown Pleas. '*Comaunde fut al viconte qil ust iij. clers un a fere execucions des comandemenz des Justices a communs pletz un altre deuant les Justices qi serunt sur les billes le terce de estre entendant as Justices de la Corone.*' It would not be safe to say that this is authority for stating that there were three, and only three, clerks of the court

[1] By independent reports I mean those reports which differ so widely from each other that they must have been the work of as many independent reporters.

[2] *Year Books of Edward III*, year XX, pt. 2, p. lxix.

[3] *Tanner MSS.* 13.

in Eyre, for the clerks referred to in the passage quoted above may possibly have been only officers of the Sheriff appointed to perform certain executive functions in addition to the recording clerks who went round with the judges. Many of the reports read as though they had been written *currente calamo* by one who only with difficulty could keep his pen level with the speeches of judges and counsel rather than as subsequent elaborations of hurried notes. For example, we often get the same personal pronoun—*il* or *vous*—standing for two or even three different persons in the same sentence. If a reporter be taking down as well as he can what a judge is saying we may suppose that he will not, as a rule, attempt to write anything more than the judge says. The judge will look towards a plaintiff and say: 'You tell us so and so,' then he will look towards the defendant and say: 'You tell us so and so.' The judge is quite intelligible to his hearers though he confines himself to pronouns. But we should expect that anyone in expanding his hurried notes into a report after the conclusion of his day's work in court would give us personal names instead of pronouns, or at any rate some such distinctive terms as 'plaintiff' and 'defendant,' when such a substitution is imperatively necessary for the ready intelligibility of his reports to readers who know naught of the case but what he tells them. The inadequacy of the mere pronoun must have struck a reporter making up his report away from the court, with time to think about what he was doing. It would, one thinks, have struck a clerk of the court, trained to attain clearness of expression even at the cost of tautology and redundancy, even more than another man.

Again, if these Year Books be the work of clerks of the court who had the Rolls under their eyes, how are we to explain the inaccuracies so often manifest in them in respect of the names of parties and places, the occurrence of variants of these too widely different to be accounted for by the carelessness of the most careless copyists?[1] To Mr. Pike this appears 'a plausible objection, and seems, at first sight, almost unanswerable.'[2] 'There is, however,' he continues, 'an answer to be found in Bracton, who had some of the records in his possession, and continually made references to them. His application of them to his work shows very much the same principle, or want of principle, as we see in the Year Books. We may find the names of the parties

[1] *E.g.* in a case of *Entry* reported on pp. 136–139 *infra* the demandant is variously described in various Year Books as *Agnes la file Johan de Cotingham*, *Agnes la femme Ricard de Elpynge* and *Agnes de Bartone*. These are not copyists' variants. They point to three independent reports by three unofficial reporters, each of whom described Agnes after his own unofficial fashion.

[2] *Year Books of Edward III*, pt. 2, p. lxvi.

in full, if more or less damaged in transcription, we may find the name of one party only, or we may find the purport of a decision stated without the names of any parties at all. The names were, in fact, immaterial for Bracton's purpose, which was to show by the cases the law on particular points.'[1] Now in the first place Bracton's book does not purport to be a collection of Law Reports; and, as Mr. Pike says, 'the names were, in fact, immaterial for Bracton's purpose.' As a matter of fact, however, there are very few anonymous citations in Bracton. There are many where he cites but the name of one of the parties, but then he cites that one name with such particularity of detail as to make it completely sufficient for all purposes of reference. For example, in citing a precedent on the law of dower he will cite it as *Probatur in itinere W. de Ralegh in comitatu Buck de Alicia que fuit uxor Baldwyn.* He will cite a precedent in novel disseisin as *ut de itinere M. de Pateshull in comitatu South. ad assisas noue disseysine capiendas et gaolas deliberandas: si Adam Gerun.* Could any addition make the reference more accurate or more certain? Would not anything further be mere surplusage? As to the fact that some of the names as we find them in Bracton's book have been 'more or less damaged in transmission'—a quite inadequate description of some of the extraordinary variants to be found in the Year Books—it may be replied that there is strong authority for believing that Bracton cited not from the original rolls, but from copies; from copies made by copyists who, says Maitland, 'have done their work fairly well though, as it seems to me, quite mechanically. They are guilty of omissions and repetitions of the kind usual with those who are paid to copy what they do not care to understand. Sometimes they leave blanks to represent words which were ill-written on the roll; *they deal very roughly with proper names*;[2] occasionally they are guilty of very stupid blunders.'[3] Elsewhere Maitland says, speaking of these same copies: 'The proper names which occur in his text have been horribly distorted by the copyists'[4]; and, again, 'considering how badly proper names have fared, etc.'[5] Bracton, then, scarcely seems to provide the answer to an 'otherwise almost unanswerable' objection.

Then, again, upon the supposition that these Year Books are the work of officials and are expansions of their notes taken for official purposes, what are we to say of the inclusion in them of cases which were certainly not heard at the times nor even in the places at which and in which such a supposition must assume that they were heard?

[1] *Year Books of Edward III*, pt. 2, p. lxvi.
[2] The italics are my own.
[3] *Bracton's Note Book*, I, p. 69.
[4] *Ibid.*, p. 78.
[5] *Ibid.*

And that several of the cases included therein were not so heard we know beyond all doubt, for the records of them have been found. We do not expect clerks of the court to make mistakes of this kind. Obvious mistakes of other kinds and some amount of arrant nonsense to be found in several of the Year Books as we have them now are not to be laid to the charge of the original reporters, whether these be clerks of the court or other. And this leads us to the remark that the question of the origin of Year Books is really a double question: the question of the origin of the original Year Books, if, indeed, any such there ever were, and the question of the origin of the Year Books as we have them now. Mr. Pike has told me that he has never seen an original Year Book, meaning by that term a book that was not almost certainly copied, with more or fewer mistakes, from some earlier book; nor, so far as I know, has anyone else. Was there ever, in truth, anything that could have been called an original Year Book? I suppose that there were in the days when the early Year Books were put together, as there have been ever since, men at the bar who found it hard or impossible to make a living from the fees they received for their advocacy. Then, as now, books of precedents, of suggestions as to the various forms of pleas that parties to an action might avail themselves of, of general information as to procedure, interspersed here and there with such miscellaneous details, in the shape of notes, as might be useful to the practitioner and the student, were wanted; and, being wanted, would, if they could be got, fetch their price. But they would be wanted in considerable numbers. The mere writing of the words in a single Year Book represented weeks of continuous work; and more Year Books were wanted than could be produced by the single-handed labour of the few expert note-takers—for I suppose that the number of men in any particular court competent to take the necessary notes could not, in mediæval times, have been a large one—and they were also wanted at a less price than that at which they could have been sold if they had been produced by the single-handed work of these few competent men. Some mediæval capitalist, possibly a syndicate of serjeants—for serjeants need law-reports above other men—see their way to a profitable investment of capital. They will engage one or two of the juniors of the court to take notes, to jot down on odd scraps of parchment just such facts as will explain why counsel in a particular case thought it worth while to venture upon the suggestion of this or that plea, trying to discover with what favour or disfavour the Justices viewed it, before committing themselves to the irrevocable averment; noting what pleas in the end were successful and what were unsuccessful and why; noting, in fact, all those points of law and procedure, all

the variety of possible pleas, all the matters, in short, a knowledge of which would usefully form part of the equipment of counsel who might be called upon to argue similar cases. These juniors would naturally be upon terms of at any rate acquaintanceship with the clerks of the court and would have opportunities, now and again, of making extracts from the Roll; and the Roll records the issues as they were finally left to a jury or to the court. If a junior has neglected to take a note during the actual hearing of a case that he ought to have reported, he can, at any rate if opportunity serve, go to the Roll and supply to some extent the deficiency therefrom. If it were the clerks themselves who put the Year Books together it is difficult to understand why, using the Roll at all, they used it so sparingly; and why, considering their sparing use of it, and comparing an extract from it in one Year Book with a report in the usual Anglo-French, dealing with the same case, in another, they used it just when they did. When it was used at all, it was used not as supplementary to the report but as a substitute for it. On the other hand if it were the juniors who made the notes for the original Year Books we can easily understand this sparing use of the Record to which they had only occasional access as gotten by consent of the clerks or surreptitiously. And here, contrasting the probabilities of the Year Books being the work of the clerks of the courts or of the juniors, we may ask why should the clerks of the courts have given themselves the trouble to compile these Year Books? They would not be likely to have done so without some adequate reason. Their time must have been too fully occupied for them to want more work for mere work's sake. The public purse held no funds for the payment of law-reporters. If the payment depended upon private enterprise officials would have no monopoly.

When the juniors—if I may work out the suggestion that these were they who took the original notes—have completed their tale of work for the day, the scraps of parchment whereon their notes have been written will be collected by agents of the capitalists—for I take it that more than one or two of these, whether individual or associated, were engaged in the business of making and publishing Year Books—and carried off to the *scriptoria* of their respective principals, which may be in some monastery or, and more probably, in some mediæval Grub Street. That *scriptoria* in which scribes wrote in Anglo-French from dictation did in fact exist in the thirteenth and fourteenth centuries the existence of treatises written for the instruction of such scribes in their business is proof. Of one of these treatises I shall speak at some length later on in this Introduction. In these *scriptoria* will be gathered men who can write with reasonable rapidity

and legibility, but whom the testimony of their work prevents us from crediting with much else. There will be brought to each *scriptorium* probably only a single note of each of such cases as it has been thought worth while to report. Someone will read this note aloud. The scribes will follow it as accurately as they can, but they will not follow it quite accurately. Even the most careful of them will make some departures from the original. Some, because they have not caught quite accurately what the reader actually said, will write *c.* (*cent*) for *v.* (*cinque*), *leyre* for *le Hore*, and so on. Others have not been able to make their pens keep pace with the reader's tongue and have to write a good deal of what they do write from memories so fluttered with anxiety lest they should fall too hopelessly behind that often it is but muddled stuff that they turn out, faulty from both its omissions and repetitions as well as from its actual perversions of fact, and couched in a style and in an orthography that vary with the skill of the individual scribe. And so from inaccuracy of hearing and from inability to follow the reader with the necessary closeness we get a series of first variants from the same set of original notes. Our mediæval capitalist and publisher thus obtains several copies of his Year Book—as many copies as he employs scribes. For the production of still further copies other means are now available. He can give his completed Year Books to his scribes to copy. These will, the best of them, really copy them, mistakes and all. But some of the scribes will be very careless. They will, indeed, be careful not to amend mistakes already made, but they will certainly add to them. They will copy down to some word, and then, raising their eyes, they will catch sight of a second occurrence of the same word lower down in their text and will continue their copy from that second occurrence, leaving out all that intervenes, be it much or little; and sometimes the omission amounts to several lines. If what is omitted can be supplied from another manuscript, we suffer no great harm, but it cannot always be so supplied. Sometimes omissions, probably arising from the same cause, are made in circumstances which make them something more than mere omissions. The omitted text will include the last part of a speech by counsel on one side and the first part of a speech by counsel on the other side, with a result that can be imagined; can, indeed be more than imagined, can be seen in its reality,[1] but certainly cannot be interpreted.

Some of the mistakes which puzzle us to-day arose, I believe, from another cause. The copyists were not legal experts. Experience of their work leaves us with little doubt upon this point. I have as

[1] For an example of this see p. 34 *infra*.

little doubt that many of them were unable to read all the abbreviations in the reports which they were set to copy. If there happened to be no more learned person to whose superior knowledge he could appeal, what was the perplexed copyist to do? What I imagine he actually did was either to make an entirely wrong guess; or, refraining from any sort of guess, make as close a copy of the cryptic abbreviation as he could, and so bequeath a still harder puzzle for the bewilderment of any subsequent copyist or editor. Sometimes their mistakes are of such a kind that no explanation of them seems possible, unless one may be found in that *crapula indigenis* (*sc. Anglie*) *innata* of which one of our mediæval chroniclers speaks. These various copies were evidently put upon the market just as they stood, mistakes, omissions and all. There was no thought of revision. Business was business, and the capitalist was anxious for his profit, and the practitioner and student must correct the books for themselves. And the fact that, so far as we know from any actual evidence that we have, no one made any serious attempt, if, indeed, anyone made any attempt at all, to correct them seems to lend some collateral support to the theory of the origin of Year Books which I am here suggesting. Some of the mistakes made by the copyists render the reports so perplexing and, at times, so unintelligible, that it is difficult to understand how any student of the Year Books could have passed them over without some attempt at correction, or at any rate some mark of interrogation or surprise. Of all the Year Books which I have examined the one that shows by far the clearest signs of use and study is that volume of Sir John Maynard's which formed the basis of the text of the printed version of 1678 of the Year Books of Edward II. Here there are annotations in plenty, but not contemporary ones. Something, too, is done in the way of correction, but more is left undone. There seems no getting away from the conclusion that if the Year Books which we have to-day were ever in the possession of contemporary students and practitioners these students and practitioners accepted them, mistakes and all, without any attempt at correction, without even a note of interrogation or of surprise. We seem driven to ask whether some of these particular Year Books ever were in fact the property of any mediæval student, whether they were not rather what to-day we should call 'remainders,' copies which our mediæval law-publisher had not been able to sell. Some of them are clean and unworn, unmarked and unnoted. They bear no sign of use. They breathe not a breath of courts or chambers or schools. And may it not very well be that we owe our possession of many of them to-day to the fact that they were 'remainders'? If they had been carried about from

court to court, searched through when some precedent was wanted, when some authority was to be cited, thumbed over at home and in the law-school, they would not have been so likely to survive the wear and tear of it all, and come down to us as unsoiled and fresh, save for some fading of the ink and discoloration from damp, as we have them to-day. I have never seen a mediæval Year Book showing any serious contemporary attempt at correction, yet it is perhaps more unlikely that every Year Book that was used and studied by contemporary students should have perished than that such students should accept without remark or correction the mistakes with which our copies of the Year Books abound. But it may very possibly be that what perplexes a modern reader of these Year Books offered no difficulty to the contemporary student. He could mentally emend the copyist's lapses with far less difficulty and with much greater confidence than we can emend them. If there were sentences here and there out of which even he could get no intelligible meaning, these were probably sentences the exact meaning of which did not very much matter to him. He could get from the reports as they stood all that he really needed, and it was not worth his while trying to correct what was immaterial. Yet that there were mediæval lawyers who were careful to correct their books the manuscript which we know as *Bracton's Notebook* is sufficient proof.

If we can suppose that the early Year Books were compiled from collections of loose slips and were so compiled by sets of people other than those who wrote the slips, and that their production from beginning to end was a purely commercial matter, we may find plausible solutions of certain difficulties, at any rate, which seem to be accentuated rather than mitigated by the suggestion that the Year Books were the work of expert officials of the courts. In a commercial *scriptorium* whose proprietor's business it was to collect slips of notes from what sources he might, whose scribes were often mechanic hirelings whose unintelligent indifference and lack of expert knowledge are patent in their work, it is not improbable that not only would duplicate slips containing reports of the same case obtained from different sources be now and again included in the bundles put together for the compilation of a particular Year Book, but that slips reporting cases altogether alien as to time and venue would also find their way into them. Indeed, if we may once believe that the Year Books were made up by copying notes that were written upon loose slips by a set of people whose work in connection with the Year Books began and ended with the taking of these notes, then we see a door widely opened to all sorts of mistakes as to time and venue; and it becomes probable enough that the

inclusion of alien matter was not always the result of a mistake. Some compiler of Year Books has not notes of cases heard during an Eyre of Kent sufficient to make as big a book as he wants to make, but he happens to have a small bundle of notes relating to an Eyre of Cornwall and a few slips noting cases heard at Westminster. These have cost him something. Here is a good opportunity for using them profitably. So they come down to us as part of a Year Book that purports to be a Year Book of the Eyre of Kent.

(4) Of Some Miscellaneous Matters.

An entry in the Eyre Roll of *Juries and Assizes*[1] clears away the doubt as to where the Justices sat in Canterbury.[2] John Attewell made a quitclaim to Henry Cobham and his wife. The entry in the Roll tells us that John *venit hic* (*sc.* into court) to execute it. The quitclaim is then set out, and concludes thus: *Datum in aula Archiepiscopi Cantuariensis in itinere Hervici de Stanton et sociorum suorum.* This makes it quite clear that the *magna aula* where the Justices sat was the great hall of the ancient archiepiscopal palace. This palace was destroyed by the Puritans during the primacy of Archbishop Laud, a fine arched gateway in Palace Street being the only relic left.

It may be remembered that Edward II, considering the inconvenience to his subjects that would be entailed by the session of the Eyre during the harvest-time,[3] gave directions that it should be suspended during August. A note in *Annales Paulini* reveals the real reasons of his solicitude lest his subjects should be incommoded. 'While the See of Canterbury was vacant,' the chronicler tells us, 'the Justices in Eyre of our Lord the King sat in Kent, and the men of Kent gave £300 to our Lord the King to purchase an adjournment of the business during harvest-time.'[4]

Several passages in the text of the reports printed in the following pages are so obscure, probably through copyists' mistakes, that it is not possible to do more than conjecture their meaning. To most of these passages I have called attention in footnotes, but it seems well to give here a general warning that such passages occur, and that the translation offered of them is only conjectural.

[1] *m.* 19.
[2] See vol. I, p. lii.
[3] *Ibid.*
[4] 'Vacante sede Cantuariensi justiciarii domini regis de itinere sederunt in Cantia et pro eo quod non deberent ibidem tenere placita sua tempore messis dederunt homines Cantie domino regi ccc. libras sterlingorum.' *Annales Paulini* (Rolls Series), p. 274.

It has been thought well to reproduce by photography part of a page of one of the Year Books of this Eyre of Kent as a frontispiece to this present volume, in order that students of the reports who have never seen one may form some idea of what an actual Year Book is like. A fair average sample of writing has been chosen for the purpose, and the particular passage has been selected as containing the few obscure words *in compendio* to which reference has already been made.[1]

(5) Of a Treatise on Mediæval French Orthography.

This Introduction seems as convenient a place as any for telling a story of interest to all students of Anglo-French and for printing for the first time what I hope is the correct text of an apparently unique manuscript. In 1840 Mr. Thomas Wright, a well-known antiquary, published in Haupt and Hoffmann's *Altdeutsche Blätter*, vol. II, pp. 193–195, the text of a mediæval treatise on French orthography to which he suffixed these words: 'These observations upon Anglo-Norman and Latin orthography of the thirteenth century were found written on a legal document in the Tower of London, no doubt written by the law-students of the time.' Prefixed to this note was his version of the text without any word of criticism. In 1884 Jacob Stürzinger reprinted this treatise in the *Altfranzösische Bibliothek*, Bd. 8, p. 1, describing it as the 'Tower document or London document now in the Record Office.' At the time when Wright printed the treatise in Germany many of the national records which are now in the Public Record Office were in the Tower, and it was perhaps not an unreasonable inference for Stürzinger to draw that a national document that was in the Tower in 1840 was in the Record Office in 1880; but beyond this plausible inference I do not gather that he had any authority for the statement. Then he goes on to say that with nothing more than Wright's vague description to guide him he had been unable, notwithstanding all his efforts, to find the original document, and that he was consequently obliged to accept Wright's description[2] and text. Nothing is known at the Record Office to-day of the existence there of any such document either now or at any time in the past; and, as Mr. Scargill-Bird, the Secretary of the Record Office, told me, it is certain that if the officials of the Record Office had been in conscious

[1] See p. xx, *supra*.

[2] 'Da es mir trotz aller Bemühungen nicht gelungen ist, auf die vage Angabe Wright's hin das Dokument wieder aufzufinden, so bin ich also ganz auf Wright's An- und Ausgabe angewiesen.' —*Altfranzösische Bibliothek*, Bd. 8, p. xxiv.

possession of such a document anything like so recently as 1840 some mention of it would occur in one of the official lists or catalogues.

Mr. Charles Purton Cooper was Secretary to the Record Commissioners for many years previously to the time when Wright published in Germany the treatise of which we are speaking. He was also a barrister of Lincoln's Inn, and presented during his lifetime and gave by his will many books and manuscripts to that Society. Amongst these was an early *Register of Writs*, which was supposed to be a Register of Writs and nothing more. Last year, apparently for the first time since it came into the possession of the Honourable Society, it was carefully examined, and at the end of the volume there was found a treatise on French orthography which is almost certainly the manuscript which Wright transcribed and published in Germany in 1840: the manuscript which Stürzinger sought for in vain and republished from Wright's text with the additional description 'now in the Record Office.' This volume was presented to Lincoln's Inn about 1848, and there is no evidence that it was ever in the custody of the Master of the Rolls, or in any other modern custody than that of Mr. Cooper. There are, indeed, some small difficulties, though capable of easy explanation, I think, in the way of asserting that the manuscript now at Lincoln's Inn and formerly in the possession of Mr. Cooper is certainly the same manuscript which Wright transcribed and published in Germany in 1840. But before going further into this it will be convenient to set out the text of the Lincoln's Inn manuscript, which I have received the permission of the Masters of the Bench to print here. The manuscript is written continuously, but, for simplicity of reference, I have divided it into numbered paragraphs. I have added, paragraph by paragraph, such translation of it as I can—an essay which neither Wright nor Stürzinger attempted—though I am well aware that in doing so I have seized an opportunity of possibly disgracing myself which a more discreet editor would perhaps have let pass. But unless someone is willing to run risks no translation of this ancient and interesting treatise will ever be made.

(1) Dictio gallice dictata habens sillabam primam vel mediam in .e. stricto ore pronunciatam requirit hanc literam .i. ante .e. pronunciari. verbi gratia. bien. dieu. mieuz. trechier. unier et sic de consimilibus.

(1a) In writing French from dictation where *e* occurs in the first or middle syllable of a word with a close sound, the letter *i* must be written before the *e*; e.g. *bien, dieu,* etc.

(2) Si autem hec vocalis .e. pronuncietur acute per se stare debet sine his vocalibus i. precessione. verbi gratia. beuez. chenez. tenez. et sic de consimilibus.

(2a) But if this vowel *e* be pronounced sharply then *i* must not be written in front of it ; e.g. *beuez, chenez,* etc.

(3) Preterea dictio terminata in .e. plene pronunciata debet scribi cum .ee. geminati. verbi gratia. donee. amee.

(3a) When the sound of a final *e* is accentuated it should be duplicated in writing ; e.g. *donee, amee.*

(4) Quando dictio terminata in .e. semiplene pronunciatur non geminetur. verbi gratia. meynte. feme. este. bone.

(4a) When a final *e* has no stress laid upon it,[1] it should not be duplicated ; e.g. *meynte, fere,* etc.

(5) Item una sillaba quandoque sapit naturam duarum vocalium quod patet in pronunciacione. verbi gratia. jeo. ceo. poet. moet, etc.

(5a) A vowel-sound compounded of the sounds of two vowels constitutes in pronunciation but a single syllable ; e.g. *jeo. ceo. poet. moet.* etc.

(6) Item nomina et verba pluralis numeri hanc vocalem .e. habentia in ultimis sillabis requirunt hanc literam .z. verbi gratia. amez. enseignez.

(6a) The plural of nouns and verbs ending in *e* is formed by adding the letter *z* thereto ; e.g. *amez, enseignez.*

(7) Item quedam sillabe pronunciate quasi cum aspiracione possunt scribi cum .s. et .t. verbi gratia. est. plest. cest.

(7a) Certain syllables pronounced with a sort of aspiration may be spelt with an *s* in addition to *t* ; e.g. *est, plest, cest.*[2]

(8) Item quandocunque diccio incipiens per vocalem sequitur immediate diccionem in vocali terminantem ille due vocales pro una sillaba computentur dum tamen debeant conjunctim sine pausa pronunciari verbi gratia. malme. maye, Dengleterre. Dyrlaunde. Dexcestre.

(8a) When a word beginning with a vowel immediately follows a word ending with a vowel, these two vowels must be pronounced together as a single syllable, no pause being made between them ; e.g. *malme, maye, Dengleterre, Dyrlaunde, Dexcestre.*

(9) Item diccio desinens in .t. in singulari numero requirit hanc litteram z. in numero plurali verbi gratia quum dicimus in singulari dyt ou fet in plurali autem dicimus hanc literam .z. verbi gratia. ditez, fetez.

(9a) Words ending in *t* in the singular form their plural by adding [*e*]*z* ; e.g. singular, *dyt, fet,* plural, *ditez, fetez.*

(10) Item quod vel qui consuevit olim scribi cum k secundum usum veterem sed secundum modernos commutatur .k. in .q. exceptis propriis nominibus et cognominibus verbi gratia Kateryne de Kyrkeby.

(10a) *Quod* and *qui* used formerly to be written with an initial *k,* but modern use has changed this *k* into *q,* except in the case of personal and place names ; e.g. *Kateryne de Kyrkeby.*

(11) Preterea prime aut medie sillabe habentes .l. post .a. vel .e. vel .o. sillabatam dum tamen alia consonans post .L. sequitur immediate ipso L debet quam u. pronunciari verbi gratia altrement malueis tresmaltalent.

(11a) Where the vowels *a, e,* or *o,* occurring in the first or middle syllables

[1] This, of course, has become the *e mute* of modern French.

[2] This is very obscure. See Professor Skeat's observations on p. l.

of a word are followed immediately by an *l*, which is itself followed immediately by another consonant, this *l* must be pronounced as *u* ; e.g. *altrement, malveis, tresmaltalent.*

(12) Item quocienscunque diccio incipiens cum consonante sequitur immediate diccionem in consonante terminantem dum tamen sine pausa pronuncietur consonans ultima diccionis anterioris debet pronunciando pretermitti verbi gratia. mieuz vaut boyr apres manger qe devant exceptis tribus consonantibus scilicet. m. n. r. que pronunciando non debet pretermitti verbi gratia Pur dieu sire Williem fetes mun talent.

(12a) When a word terminating in a consonant is followed immediately by a word commencing with a consonant the final consonant of the preceding word is silent ; e.g. *mieuz vaut boyr apres manger qe devant.* If, however, such final consonant should be *m* or *n* or *r*, it must be sounded ; e.g. *Pur dieu sire Willem fetes mun talent.*

(13) Item hec dicciones graunt quant possunt breviter scribi cum titellis ex triplici et in feminino genere graunde et quantdefoiz.

(13a) The words *graunt* and *quant* may be abbreviated into three letters with a tittle over them ; and similarly *graunte* in the feminine gender, and *quantdefoiz.*[1]

(14) Item .moi. toi. sei. fei. Roi et similia possunt scribi per o. vel per e. indifferenter per diversitatem et usum lingue gallicane.

(14a) Recognized French custom permits us to write either *moi* or *mei, toi* or *tei, soi* or *sei, foi* or *fei, Roi* or *Rei* ; and similarly with similar words.[2]

(15) Item hec diccio quoer. cuoer. potest scribi indifferenter cum e. vel o.

(15a) In the word *quoer* or *cuoer* either the *e* or the *o* may be omitted at will.

(16) Item notandum quod omnia propria nomina dignitatum potestatum seculariumque dominancium in principio clausularum debent scribi in principio dictionis cum litera capitali maxime in litera curiali.

(16a) It is also to be noted that proper names and the names of dignities, powers and secular lords occurring at the beginning of paragraphs should be written with an initial capital letter, especially when the writing is in court hand.

(17) Quandoque I stat immediate ante vel post m. n. vel u. potest mutari in .y. ut legibilior sit vel stare in sua natura.

(17a) Whenever the letter *i* immediately precedes or follows one of the letters *m, n,* or *u,* either *i* may be written or may be changed into *y* for the sake of being more easily distinguished.

(18) Quando dictio monosillabica incipit per S solet rotundari exempli gratia sum si se et similia.

(18a) An *s* at the beginning of a monosyllabic word is usually written in the rounded form [as distinguished from the long *s*] as in *sum, si, se* and similar words.

(19) Differentia est in gallica mund munt et similia.

(19a) There is a difference of meaning in French between *mund* (the

[1] That is to say that *graunte* and *quant* in *quantdefoiz* may be written *in compendio* with tittles.

[2] Showing that the use was still quite unsettled.

world) and *munt* (a mountain), and the same must be remembered of other similar words.

(20) Item quandocunque .n. m. in aliqua dictione sequitur hanc consonantem .g. non debet precedere verbi gratia Busoignes et similia.

(20a) When *n* or *m* immediately follows the consonant *g* in any word it should not [also] precede it, e.g. *Busoignes* and the like.[1]

(21) Item quandocunque m. in aliqua dictione precedit hanc consonantem [n ?] tum p. debet interponi verbi gratia dampnum.

(21a) When an *m* precedes an *n* in any word a *p* should be inserted between them ; e.g. *dampnum.*

(22) Notandum quod spacium inter dictiones continebit hujus littere n.

(22a) A space of the size of the letter *n* should intervene between two consecutive words.

(23) Item in fine linee si necesse fuerit potest dictio dissillibari sed sillaba nullo modo separatur.

(23a) If it be necessary at the end of a line to divide a word such division must be by complete syllables. A syllable must not be divided.

(24) Item longe littere se extendunt usque ad medium spacium interlineare et quando dictio oneratur literis longis scribatur absque titellis verbi gratia abscondere Galfridus et sicut de similibus.

(24a) Long letters should extend to the middle of the space between the lines ; and a word containing long letters must be written without tittles ; e.g. *abfcondere, Galfridus,* and similarly with similar words.

(25) Item ad hoc quando litera equata linealiter scribatur debet plicare vel eque cindere pergamentum pro superiori et primam lineam per illam plicam eque dirigere.

(25a) When any document is to be written in regular lines a fold should be made in the parchment, or its top edge should be cut straight, and such fold used as a guide for the straight writing of the first line.

(26) Item scribendo literam posteriorem sillabam vel dictionem [debet ?] considare [*sic*] litteram anteriorem et propinquam.

(26a) Also, in writing a letter, syllable, or word that follows another, one must keep it in line by looking at what goes immediately before.

(27) Item in omnibus dictionibus latine [*sic*] in quibus hec littera L ponitur in eadem dictione gallica debet poni verbi gratia multum in latino vocatur molte vel multe in gallico.

(27a) Also, wherever the letter *l* occurs in a Latin word it is to be retained in the French equivalent of that word ; e.g. the Latin *multum* is written *molte* or *multe* in French.

[2] Une. deuz. treys. quatre. synk. sies. septe. huyt. noef. dys. unse. dusze. tresze. quatrusze. quynsze. sesze. diszepte. dysuyte. disnoef. vynt. trent. quarante. synkant. septant. huytant. quatreuynt.[3] cent. mille. dismille et sic de singulis.

Nulle chose vaute saunz ordaynment du quoere.[4]

[1] A custom of writing *ngn* for *gn* was of very old standing and widely spread.

[2–4] Omitted from Wright's transcript.

[3] *dys* seems to be omitted.

Wright's text varies from the above in the following particulars. In (1) he writes *hujus vocalis* instead of *his vocalibus*; in (4) *feine* for *feme*; in (5) *sapat numerum* for *sapit naturam*; in (6) *pluralia numera* for *pluralis numeri*; in (11) *b* for the second *l*; in (12) *s. m. n. r.* for *scilicet m. n. r.*; in (13) *quante foiz* for *quant de foiz*; in (16) *maxima* for *maxime*; in (25) *inderi* for *cindere* and *seu* for *per*.

Some of these variations seem to be due to uncorrected printer's errors, unless we suppose, as there is certainly reason for supposing, that Wright contented himself with copying what he thought he saw without checking his eyes by his intelligence—that is, by making some sort of a translation as he went on. In (11) the *b* for *l* seems almost certainly a misprint; so too, one would suppose, is *feine* for *feme* in (4); and again *maxima* for *maxime* in (16). If there is even one uncorrected misprint there may be others. *Sapat* in (5) is probably a misprint for *sapit*.

Then there is another source of error—the expansion of abbreviations. In (5) where Wright gives us *numerum* there is no doubt that *naturam* is the correct expansion. In (6) he writes *pluralia numera* where he should have written *pluralis numeri*. It ought to be added that he adds *sic* after *numera*, and perhaps the *i* in the Lincoln's Inn manuscript bears some resemblance to an *a*, but comparison with other *a*'s and *i*'s clearly shows that it is an *i*, which sense demands that it should be. *Pluralis* is *in compendio* and no case-ending appears. Paragraph 12 gives perhaps the clearest proof of the carelessness to sense with which Wright made his transcript, for there he writes *tribus consonantibus s. m. n. r.* instead of *tribus consonantibus scilicet m. n. r.* In (25) we have *seu* instead of *per*, another incorrect expansion. Variations of another kind, due probably to careless reading, are *quante foiz* in (13) for *quantdefoiz*; and *inderi* for *cindere* (*sc. scindere*) in (25). To the hasty eye of a copyist not stopping to consider the meaning of what he was copying the *cindere* of the Lincoln's Inn manuscript might easily pass for *inderi*. In (12) Wright leaves a blank space (. . .) immediately before *talent*, through *mun* seems legible enough in the manuscript, and, even if it were not, would be the conjectural reading that would be something more certain than a mere conjecture.

Such was the text that Stürzinger had to deal with in his critical appreciation. For Wright's reading of *hujus vocalis* in (2) he suggests *his vocalibus*, the correct reading. For *sapat* in (5) he suggests *capit*; but if we replace *sapat* with *sapit* and *numerum* with *naturam*, which are the readings of the text, then *sapit naturam* is good enough Latin.[1]

[1] Cp. Pliny, *Hist. Nat.* II, 8, 8, sect. 18: 'cum in Hispania multa mella herbam istam sapiunt.'

For *inderi* in (25) Stürzinger suggests *lineari*; but here again the actual reading *cindere* needs no emendation.

Three other manuscripts of a similar nature are known.[1] Stürzinger considered all four to be variants of a lost original. He believed the manuscript of which Wright purported to give a transcript to be a direct copy of this lost original, and that the others derived from this same original by a longer descent of which the intermediate links have been lost. His principal reasons for believing that the manuscript of which Wright professed to give a copy could not be the original one are the occurrence therein of the impossible *sapat* in (5), *numera pluralia* in (6) and *inderi* in (25). Then he thinks that something is omitted after *vocalium* in (5) and that *dicimus* or some such word has dropped out after *genere* in (13).[2]

The difficulties presented by the readings *sapat*, *numera pluralia*, and *inderi* are cleared away by a more careful reading of the text; and Stürzinger's two other objections, even if they be really sound ones, do not seem sufficient, when they stand by themselves, to degrade the manuscript from the *status* of an original into that of a copy, even if a direct one.

It seems more than probable, then, that the Lincoln's Inn manuscript is the original treatise from which the manuscripts in the British Museum, the Cambridge University Library and the Magdalen College Library derive by a descent of which the intermediate links have been lost.

Rules 18, 19, and 21–27 inclusive in the Lincoln's Inn manuscript appear in none of the other three somewhat similar manuscripts, though these contain, by later addition, much that does not appear in the older document.

Professor Skeat kindly read the proof sheets of this section of this Introduction. He is of opinion that the manuscript is of the latter half of the thirteenth century, and writes as follows in elucidation of certain difficulties in it: 'The scribe is confused as to some points; and he has mixed up English ideas with his French ones. What

[1] *Harleian MSS.* (British Museum) 4971; Cambridge University Library, MS. Ee. 4. 20; Magdalen College, Oxford, MS. 188.

[2] 'Alle 4 Handschriften sind unabhängige Kopieen. Dass auch die älteste nicht die Originalhandschrift ist, geht aus den verschiedenen Fehlern hervor, die nicht dem Herausgeber Wright zur Last gelegt werden können. So steht *sapat* (!) statt *capit* in (5), *numera pluralia* (!) in (6), *eque inderi* (!) in (25). Dann scheint in (5) hinter *vocalium* ein Satz, und in (13) hinter *genere* ein *dicimus* oder etwas Aehnliches ausgefallen zu sein etc. Und dass keine Handschrift von den andern abgeschrieben ist, lehrt ein Blick auf die Ueberlieferung des Textes.'—*Altfranzösische Bibliothek*, Bd. 8, p. xxvi.

proves his inability to understand what the early Norman really was is shown by section (10), "consuevit *olim* scribi"; i.e. they did not keep it up in *his* time. And his section (14) is simply wrong. The great distinction between Norman and Parisian is (as has been said very often) that Norman had *ei* for *oi*, and pronounced it like the *ei* in *veil*. Thus for Paris *voile* the Norman had *veile*; and English has it to this day. But this scribe confuses them and says that you may write which you please! He regards them as graphic variants, and thinks it does not matter.

'I fancy that this gives some clue to his extraordinary "aspiration" of *s* in paragraph (7). By *cest* he must mean the O.F. *cist, cest*; modern French *ce, cet* (as in *cet homme*), derived from Latin *ecce-istum*, shortened to *ecc'istum, cistum*. He is trying to make out *why* there is an *s* in *cest* at a time when it was failing to be appreciated, and he opines that it arose from some idea of "aspiration"—"*quasi cum aspiracione*," "*as if* by a sort of aspiration." I think that I see how he got this notion, viz. from the way in which the *older* Norman scribes treated the English "aspiration," chiefly before final *t*. They were at trouble to find a symbol for the *ht* in Anglo-Saxon and Middle English words like *bright, light*, etc. And it is a fact that some of them did actually begin to write *st* for Anglo-Saxon final *ht*. Examples may be found in Morris's *Specimens of Old English* (Clarendon Press), Part I, A.D. 1150–1300. Thus, at p. 237, is a piece called *King Horn*. In line 8 Morris prints "Faire[r] ne miȝte non bene"="Fairer might none be." His footnote says that the word *miȝte* (later written *mighte*) with ȝ pronounced like the German *ch* in *nicht* is really written *miste* in the MS. Why, of course it was! The scribes actually had an idea that by saying *miste* they approached the English guttural by pronouncing a French *s*. If you go further you will find more such footnotes. Thus, at p. 245, we find, at line 249, the word *doȝter* with a note "the MS. has *doster*." The German still has "To*ch*ter." Nevertheless the scribe very often uses ȝ instead. At line 260 he really has *miȝte* = *mighte*. And so on.

'I think that this proves what the writer of the Treatise was thinking of. He knew that the old scribes often wrote *st* for the English *ght* (which was only a desperate attempt at getting somewhere near the sound); and so thought that the French *s* in the combination *st* must have once been guttural. Not altogether bad reasoning; only it does not happen to be correct. Note that he refers to the combination *st* only. Surely, surely, this precious *s* is simply due to a *Norman* scribe who wrote *st* to denote the Anglo-Saxon *ht*.

'His remark (10) is right in a way; The *old* scribes usually did

write *ke* for *que*. But they only did so, *at first*, to the best of my belief in *ke* = *que*, and *ki* = *qui*. You see how he has muddled it. He first of all says that they wrote *ke* and *ki*; and then he goes on to talk as if *k* for *qu* were general. Why, the man has just said that it was particular.

'His (11) is curious. What happened was this. *Al* + consonant (say *alt*) became *ault*, by inserting *u* before *l*. Then the *l* became slighter and slighter and at last disappeared in French (not in English); and so French *alt* became *aut*, and people thought that *l* had *changed* into *u*! As for English, how do you pronounce *malt*? Why, as *mault*. We have both the *u* and the *l*. But the Normans did succeed in turning English *lk* into *uk*. For how do you pronounce *talk* and *walk*? Note that *walk* (*a* as in Italian) became *waulk* (*au* as in Italian, I suppose), and then *wauk*. And the modern English *au* is the outcome of the old *au*.'

My thanks are again due and are gratefully given to Sir Frederick Pollock and Professor Vinogradoff for their help in clearing up many difficulties which presented themselves in the texts dealt with in this volume; to Professor Skeat for his observations on the mediæval treatise on orthography; and also to Mr. B. Fossett Lock, the Honorary Secretary of the Selden Society, and Mr. W. Paley Baildon, both of whom read a large part of this Introduction in manuscript.

W. C. BOLLAND.

*** Tables of the cases in Volume I, of the names of the parties thereto, and of the Statutes referred to, are appended to the present volume.

EYRE OF KENT

EYRE OF KENT, VOL. I.

Errata

Page xvii, tit. 24, *for* Scotand *read* Scoland

Page xlv, lines 2 and 22, *for* Alice *read* Goldwitha

ITER KANCIE

ACCOUNTE.

[1]ANON. *v.* ANON.

[2]I.

[3]Bref de acounte[3] porte par le heir celui[4] qe tient en sokage ou une femme avoit la garde tant qe [5]ele fust sole[5] iij. anz et apres ceo prist baron et le baron et la femme tindrent viij. anz et le bref fust conceu vers le baron soul [6]e il respondit de les viij. anz etc.[6]

Un A. porta un bref dacounte vers B. du temps qil avoit sa terre en garde tenu en sokage par resoun de nounage.

Malm. Nous vous dioms qe nous trouvames nostre femme seisi de ceste garde quaunt nous lesposamus et seisi fut treis aunz avant et cestui bref est porte vers nous soul et nostre femme nient nomee. Jugement du bref.

Caunt. Vous mesmes avez [7]eu la garde[7] viij. aunz avant etc. de quel temps nous demaundoms lacounte. Jugement si vous ne devez respoundre.

Malm. Qaunt a ces viij. aunz nous sumes prest dacounter et prioms auditours et qaunt a les iij. aunz qe la femme avoit la garde avaunt qele fut espose le bref qe est porte vers le baroun soul[8] ne put servir.

Pur qei en dreit de ceux iij. aunz il demaunda lacounte par bille vers le baroun et la femme joyntement etc.

[9]II.

Une femme avoit la nurture dun enfaunt & la gard de ses terres en socage, ele seisie iii aunz prist baron pus[10] vynt lenfaunt & porte

[1] Reported by *α*, *αα*, *β*, *γ*, *δ*, and *ϵ*. [2] Text of (I) from *α* collated with *β*. Head note from *αα* collated with *β*. [3–3] Breve de compoto *β*. [4] *β omits.* [5–5] fut a le (*sic*) *β*. [6–6] *from β*; *αα omits.* The note given by *α* is :—Breve de compoto ou le baroun allege qil trova sa femme seisi de la garde en socage treis aunz avaunt lesposailles et de ces iij. aunz il pria alowaunce. [7–7] *β omits.* [8] *from β*; *α omits.* [9] Text of (II) from *γ* collated with *δ* and *ϵ*. [10] *from ϵ.*

EYRE OF KENT

ACCOUNT.

ANON. *v.* ANON.

I.

Writ of account brought by the heir of a tenant in socage where a woman was guardian during the time she remained sole. At the end of three years she married; and husband and wife held for eight years. The writ was directed to the husband alone, and he answered for the eight years etc.

One A. brought a writ of account against B. for the time during which B. had held A.'s socage land as guardian by reason of A.'s infancy.

Malmerthorpe. We tell you that we found our wife seised of this wardship when we married her, and she had been so seised for three years previously. This writ is brought against us alone. Our wife ought to be joined. Judgment.

Cambridge. You alone have held the wardship during the last eight years; and it is for that time that we demand an account. Judgment whether you ought not to answer.

Malmerthorpe. For those eight years we are ready to account, and we ask for auditors. But a writ brought against the husband alone for the three years when the wife had the wardship before her marriage must fail.

Whereupon the heir demanded an account for those three years by a bill directed against the husband and wife jointly.

II.

A woman had the nurture of an infant and the wardship of his lands in socage. When she had been so seised for three years she married.

bref dacounte soulement[1] vers le baron [2]sanz nomer la femme par quei[2] &c.

Malm. [3]pur le baron: Syre[3] nous trovames nostre femme seisi de la norture & ele nest mie nomee en la bref. Jugement de bref.

Caunt. nous ne demandoms vers vous mes[4] lacounte del temps qe vous esposastes vostre femme par qey le bref est bon.

Et [5]stet breve versus eum[5] pur cel temps mes del temps avant les esposailes il covendroit porter bref vers le baron & sa femme &c.

AEL.

[6]ANON. *v.* ANON.

[7]Ael ou damages ne furent mie recoverez pur ceo qu il perdist par defaute[8] et ne mie par jugement. [9]Quod falsum est nunc.[9]

[10]Si homme[11] rescovre vers le tenaunt en bref dael par sa defaute il ne recovera mie damages sil ne[12] rescovere par iugement sour verdit denqueste ou par jugement qe chiet[13] en ley. E nepurquaunt Statut de Gloucestre voit *indistincte* qe homme rescovere damages en bref dael &c. ut patuit coram Hervi [14]in Eodem itinere.[14]

AMEYSUREMENT DE PASTURE.

[15]NOTA.

Nota qe un estrange qe ad comune en autri soit si le seignour agiste animales a la pasture ou eit de ses avers demene a cause qe lautre ne purra mye avoyr sufficient pasture il purra user bref de amesurement de pasture. *Secus* le tenant devers le seignour.

ANNUITE.

[16]NOTA.

Nota qe[17] en un bref dannuite homme doit recoverir damages du temps de cesser taunt qe a jour de jugement rendu. Et en assise de novel diseisin de rent charge forsqe du temps du cesser taunt qe a jour de bref pourchace taunt soulement.[18]

[1] ϵ *omits* soulement. [2–2] *from* δ, ϵ. [3–3] *from* δ, ϵ. [4] fors ϵ. [5–5] fust le bref agarde bon vers ly δ, ϵ. [6] Reported by *a*, *aa*, β. [7] Headnote from β, collated with *aa*. [8] *aa omits* par defaute. [9–9] *aa omits*. [10] Text from *a* collated with β. [11] Thomas β. [12] *from* β; *a omits*. [13] β *omits* qe chiet. [14–14] &c. β. [15] Reported by β only. [16] Reported by *a*, *aa*, β, λ. Heading from λ; text from *a* collated with β and λ. [17] β *omits* qe. [18] λ *adds* et eam varie.

The infant comes and brings a writ of account against the husband solely etc.

Malmerthorpe, for the husband. Sir, we found our wife seised of the nurture, and she is not named in the writ. Judgment.

Cambridge. All we are asking for against you is an account for the time since you married your wife, and so the writ is good enough.

The writ was ruled to be good against the husband for the time after his marriage; but a writ must be sued out against the husband and wife jointly for the time before the marriage.

AEL.

ANON. *v.* ANON.

Ael where damages were not recovered because the tenant lost by default and not by judgment. Which is bad law now.

Where a demandant recovers against a tenant under a writ of Ael by reason of the tenant's default, he shall not recover damages; but only in the case where he recovers by judgment founded upon the verdict of a jury or upon a point of law. And yet the Statute of Gloucester says,[1] without making any distinction of cases, that a man shall recover damages by a writ of Ael etc., as appeared in a case before STAUNTON J. in this same Eyre.

ADMEASUREMENT OF PASTURE.

NOTE.

Note that a stranger having common of pasture upon another man's land may have a writ of Admeasurement of Pasture if the lord agist cattle upon the pasture or have beasts of his own there, because the stranger is stinted of his pasture. But it is otherwise as between tenant and lord.

ANNUITY.

NOTE.

Note that under a writ of Annuity a man may recover damages from the time of the withholding of the annuity till judgment; but in an assize of novel disseisin of rent charge only from the time of its ceasing until the day of the purchasing of the writ.

[1] *Statute of Gloucester*, cap. i. See *Statutes of the Realm*, I, p. 47.

CESSAVIT.

[1]NOTA.

Nota la [2]ou un homme porta le[3] *cessavit* et le defendant fist defaute apres defaute par quoi le demandant pria seisine de[4] terre le defendant dit qe la ou il dit qil tient de lui une carue de terre par le services de xx.*s.* par an[5] il ne tient [6]de lui forsque un[7] demi carue de terre par les services de x.*s.* par an et tendi les x. *s.* a delaier la jorne par cel averrement et dit plus[8] pur ceo qil ne fust mie returne en le petit *cape* per visum de tenemenz[9] par quoi fust agarde qil ne se prist point par son bref etc. pur ceo qe par le petit *cape* si perdreit il accion pur tutz jours.[10]

COMUNE DE PASTURE.

NOTA.

[11]I.

Qe[12] si comune de pasture seit grauntee a un homme par especialte[13] en le wast del grauntour celui a qi le graunt se[14] fet puet entrer et user sa comune saunz liverer de seisine : par *Pass.* et *Malm.* etc.

[15]II.

Nota qe si comune de pasture me soit grant par especialte en ascun wast jeo poi user ma comune quele heure qe jeo voile sans liverie par *Pass.* e *Malb.* (*sic*). E *Westcote* dit qe en teu cas trove fust qe le plaintiffe ne fust unqes seisi &c et lautre il chasa eins ses bestes et fust disturbi et porta lassise et recovera &c.

[1] Reported by *aa* and *β* only. Text from *aa* collated with *β*. [2–3] un porte un *β*. [4] *β adds* la. [5] *β adds* qe. [6–7] qe *β*. [8] *β adds* qe. [9] *β adds* e de tenemenz. [10] The latter part of the text is obscure, but the meaning is probably as given on the opposite page. [11] Reported by *α*, *aa*, *β*, and *θ*. Text of (I) from *α* collated with *β*. [12] *β omits* qe. [13] *β inserts* par especialte *before* a un homme. [14] est *β* [15] Text of (II) from *θ*.

CESSAVIT.

NOTE.

Note that where a man brought the *cessavit* and the defendant made default after default, so that the demandant prayed seisin of the land, and where the defendant then said that whereas the demandant alleged that he, the tenant, held one plough-land of him at a rent service of twenty shillings a year he in fact held only half a plough-land of him at a rent service of ten shillings a year, and tendered the ten shillings that the hearing might be adjourned by virtue of this averment; and took the further exception that view of the tenements was not returned in the petty *cape*, the Court thereupon ruled that the demandant could take nothing by his writ etc., as the effect of the petty *cape* was to deprive him of his right of action for ever.

COMMON OF PASTURE.

NOTE.

I.

If common of pasture be granted to a man by specialty in the waste of the grantor, the grantee may enter and enjoy his common of pasture without delivery of seisin. *Per Passeley* and *Malmerthorpe* etc.

II.

Note that if common of pasture in any waste be granted to me by specialty I can use my common as soon as I like, without delivery of seisin, *per Passeley* and *Malmerthorpe*. And *Westcote* said that in such a case where it was found that the plaintiff was never seised but was disturbed by another pasturing beasts there he brought the assize and recovered etc.

COSINAGE.

[1]HAMILE *v.* CHALON.

[2]I.

Cosinage ou excepcioun de drein seisine fut allegge et dit fut qe cele qi seisine fut allegge fut bastarde.

Geffrei de Hamile porta soun bref de cosinage vers Johan Chalon et demaunda x. acres de terre et counta de la seisine Robert soun cosin.

Loveday. Nous conusom bien qe Robert morust seisi apres qi mort entra une Johane com file et heir et fut seisi et ceo est un bref de possessioun qe voet &c. Jugement du bref.

Assele.[3] La seisine celui nous ne doit targer[4] kar ele est[5] bastarde.

Laufare. A ceo ne devez avenir kar cesti bref est en la possessioun et la bastardie qe vous alleggez si est en le dreit qe ne puet en cestui bref de possessioun estre trie [6]par qey &c.[7]

Spig. Si Johane de qi cest excepcioun de drein seisi est allegge fut einz et le bref[8] porte vers lui ele pout clamer par meisme la descente et tut fut la bastardie allegge[9] en sa persone homme ne lenquerreit point [10]de la bastarder[11] mes le bref se abbatereit pur quei ne deit donqe la excepcioun de drein seisi qest allegge par bouche destraunge a qi la excepcioun est proprement done[12] bref abbatre.

Ston. Si bref fut porte devers lui et ele clamast la ou ele est einz et partie la receut[13] ceo serreit de[14] bref abbatre mes en nostre caas ele est hors et nient partie par quei il ne sunt paas semblables.

Fr. La resoun pur quei la clamer abate le bref de possessioun de si legger pur lavauntage au demaundant en soun bref de dreit qe bataille et graunde assise ne git paas entre eux ne celui qe cleime ne puet mie pleder com estraunge mes soulement trierent[15] la procheinete mes en ceo caas si [16]le bref[17] serreit abbatu par excepcioun de drein seisi le

[1] Reported by *a*, *aa*, *β*, and *θ*. [2] Text of (I) from *a* collated with *aa* and *β*. The note in *β* is :—

Nota ex isto placito. Cosinage ou drein seisi fut alege. Le demandant dit qe la seisine celi ne ly dut nuyre car il est bastard. Le tenant dit qe a ceo ne dut il avener pur ceo qe la bastardie fut en le dreit e la excepcion en la possession e demanda jugement si daleger en bref de possession dut il avener. To this has been added by the same later hand that wrote the *clamer* noted below :—

'Mes le bref se abaty pas.' *aa* has practically the same note.

[3] *Asseby aa, Aneby β.* [4] nuire *β.* [5] fust *aa.* [6–7] *aa and β omit.* [8] *β adds* fut. [9] *aa omits.* [10–11] *from β ; a and aa omit.* [12] *β adds* pour. [13] The final *t* in this word has been squeezed in afterwards. *β* has *receu.* [14] done pur *β.* [15] trieront *aa ;* triereit *β.* [16–17] *from β.*

COSINAGE.

HAMMIL *v.* CHALON.

I.

Cosinage where exception of 'last seised' was taken, and it was said that she whose seisin was alleged was a bastard.

Geoffrey of Hammil brought his writ of cosinage against John Chalon and demanded ten acres of land ; and he counted of the seisin of Robert his cousin.

Loveday. We are quite ready to admit that Robert died seised. After his death one Joan entered as his daughter and heiress and had seisin. This is a possessory writ which assumes that etc. Judgment of the writ.

Asshely. Joan's seisin ought not to prejudice us, for she is a bastard.

Laufer. That you are not entitled to say. This is a possessory writ, and bastardy, which you are alleging, goes to the right, and cannot be tried under this possessory writ ; therefore etc.

Spigurnel J. If Joan, touching whom this exception of last seised has been taken, were in possession and the writ had been brought against her, she would be competent to claim on the strength of the same descent ; and though bastardy should be pleaded against her the court could not inquire into that, but the writ would abate. Why, then, should not the exception of last seised, even if taken by the mouth of a stranger to the party to whom such exception is properly allowed, abate the writ ?[1]

Stonore. If it was against Joan that the writ was brought, and she, being in possession, claimed [the right], and the other side received her, that would abate the writ ; but here, in our case, she is not in possession and she is not a party ; and so the cases are not similar.

Friskeney.[2] The reason why a claim [to the right] peremptorily abates a possessory writ is that the demandant may have the advantage of a writ of right, for [under a possessory writ] battle and grand assize do not lie between the parties, nor can a claimant who is not a party come and plead. All that can be tried is the question of relationship. Now, in this case, if the writ were to be abated by the exception of last seised the demandant would not have the

[1] The words *pur quei* have been taken interrogatively, but it is by no means clear what opinion Spigurnel J. intended to express.

[2] Friskeney seems to be speaking as *amicus curiæ*.

demaundant navereit nul[1] le avauntage a soun bref de dreit qe bataille et grante assise girrount[2] countre[3] eux par quei homme put plus tost allegger bastardz[4] encountre la excepcioun de drein seisi qe encountre le clamer.[5]

E puis *Loveday* dit [6]de gree[7] Moellere[8] prest etc.

Spig. dixit[9] non per judicium.[10]

[11]II.

Cosinage. [12]Jon porta bref de cosinage vers Richard de B. & demanda certeins tenementz de la seisine son cosyn descendu a lui &c.

Caunt. defend et dit[13] la ou il ount fet lour descent de Adam pur ceo qil morust saunz heir de son corps descend le fee et le demene a W. la dioms nous qe apres la mort Adam entra une Margerie come fill et heir et seisi feust et cest un bref qe veut estre porte del drein seisi. Jugement de bref.

Loved. sa seisine ne sa entre ne nous deit nure qar ele entra com nostre toleresse qar ele fust bastard.

Spig. si celui en qi persone la dreyn seisine est alegge feust einz et clama par mesme la descente[14] vous ne serrez mie receu a dire Clamer ne poez qar vous estes bastard et a ceo accordent les seriauntz et hoc nota par quey serrez[15] vous donqes plus receu en ceste dreyn seisine de repplier qe lentre de cele ne vous doit nure qar ele est bastard quasi diceret non video. Item Jeo voy qe si le tenant vouche cele en qi persone il alegge la dreyn seisine ele vendreit et clamereit et abatereit le bref et par taunt ostereit il bataille et graunt assise et voche[16] a garauntir et ceo serroit avauntager le demandaunt mes tut abatesist cesti bref par exception de dreyn seisine et le demandaunt porte autre bref uncore il [ne][17] avereit bataille [et] graunt assise par qey le demandaunt navereit nule avauntage par qey il semble a[18] acune gent qe plus tost doit homme meyntenir le vocher en cesti cas qe lexcepcion de dreyn seisi etc. qar celui en qi persone la dreyne seisine est alegge est en pleyne vye mes sil feust mort aliud esset etc.

[1] my β. [2] girrett *aa*; girreit β. [3] entre β. [4] bastardie β. [5] In β *clamer* has been written by another hand over an erasure. [6–7] de greignoir *aa*; β *omits*; the meaning of the words is very doubtful. [8] β has *Mulier* written in a more modern hand over an erasure. [9] β *omits*. [10] The reporters have not considered it worth while giving us Spigurnel J.'s *obiter dictum*. [11] Text of (II) from γ collated with ϵ. [12] ϵ *adds* Un. [13] ϵ *adds* Sire. [14] ϵ *inserts* Jeo entenk qe. [15] serriez ϵ. [16] vocheroit ϵ. [17] It seems clear that *ne* has been omitted here. See the previous version of the case on p. 4. [18] *from* ϵ.

advantage of a writ of right where battle and grand assize would lie between the parties. Consequently one should rather allege bastardy in reply to an exception of last seised than in reply to a claim to the right.

And then *Loveday* said :—Then we are willing to aver that she is legitimate.[1] Ready etc.

Spigurnel J.'s remarks were not by way of judgment.

II.

Cosinage. John brought his writ of cosinage against Richard of B., and demanded certain tenements which had descended from the seisin of his cousin to himself etc.

Cambridge defends and says :—Whereas they have made their descent from Adam, alleging that, as he died without heir of his body, the fee and demesne descended to W., we tell you that one Margery entered after the death of Adam, as his daughter and heiress, and was seised ; and this is a writ which ought to be brought upon the seisin of the last person seised. Judgment of the writ.

Loveday. Neither Margery's seisin nor her entry ought to be prejudicial to us, for she entered but as our toleress,[2] seeing that she is a bastard.

Spigurnel J. If she in whose person the latest seisin is alleged to be were in possession and claimed by the same descent, you would not be received to say ' you cannot claim for you are a bastard.' And with this the serjeants agree. [3]*And note this.*[3] Why should you be received to reply to this exception of last seised by saying that Margery's entry ought not to harm you, since she is a bastard ?—*meaning 'I do not see why you should be.'* I see that if the tenant were to vouch her in whose person he alleges the latest seisin to lie, she will come and make claim and abate the writ, and by so doing will oust right of battle and grand assize and voucher to warranty, all of which things are to the advantage of the demandant. But if the tenant should abate this writ by the exception of last seised, and the demandant should then bring another writ, he will lose his right to battle and grand assize, and, consequently, his advantage. Wherefore it is the opinion of some that in such circumstances the voucher rather than the exception of last seised should be maintained ; for she in whose person the last seisin is alleged to lie is alive. If she were dead it would be otherwise.

[1] It is not clear whether *de gree*, which has been taken as equivalent to *de gratia*, are counsel's words or the reporter's.

[2] A toleress is one who tolls the entry, i.e. bars the entry of another.

[3–3] An interpolation by the reporter.

Pas. Sire la ou il dient qe sa entre ne lour deit nure pur ceo qe ele est bastard muliere prest [1]del averrer[2] etc.

Spig. Nous veoms qe le demandant est un enfaunt denz age et cele Margerie de qi vous parlez est en pleyne vye la qele vous poez voucher mes si ele fust morte autrement serroit quasi diceret lexcepcion serroit receivable.

Par qey il fust chace de vocher la etc.

Cant. Donqes vochoms nous cele Margerie.

Malm. countreplede le voucher et dit qil mesme fust le primer qi se abati &c apres la mort lour auncestre etc.

Pas. Margerie fust seisi et aliena prest etc.

Alii econtra. Ideo[3] etc.

[4]ANON. *v.* ANON.

[5]I.

Richard un enfaunt denz age porte bref de cosinage vers une Agnes [6]et demande certeins tenementz[6] de la seisine un Thomas son cosyn [7]de T. pur ceo qil morust saunz heir de son corps descendu etc. a Willem com a frere de W. a Rogger com a fitz de Rogger a Adam com a fitz de Adam a Richard com a fitz qore demande.

Pas. defend et dit nous vochoms a garantir par eide [8]de ceste Court un[8] Wautier ate Stone qi serra somons en cest countee.

Cant. [9]Jeo voil averrer qe[9] vous mesme estes le primer qi abati[10] en les tenementz apres la mort Thomas nostre cosyn prest &c.

Pas. Donqes voil jeo desclose[7] le cas. Thomas[11] fust seisi com de son heritage et hors de sa seisine enfeffa [12]W. ate Stone[12] W. graunta les tenementz ariere[13] a [14]Thomas et a[14] Agnes sa femme a[15] lour [16]vyes et la reversioun a ly et veez ci le fet qe tesmoigne le lees ore voche Agnes[17] de tiel estat cely Wautier. [18]Jugement si le voucher ne soit assez bon.[18]

Cant.[19] Thomas fust seisi des tenementz en son demene com de fee le jour qil morust prest &c.

Pas.[20] a cel averrement ne pooms[21] estre partie saunz Wautier.

[1–2] *from* ϵ. [3] *from* ϵ. [4] Reported by γ, δ, ϵ, η, θ. [5] Text (of I) from γ collated with δ and ϵ. [6–6] δ *omits.* [7–7] Agnes defend et desclose δ. [8–8] *from* ϵ. γ *has* &c. [9–9] from ϵ. [10] Se abatist ϵ. [11] et dit qe meme celly T. de qi seisine il porte son bref δ. [12–12] un Wautier δ. [13] δ *omits.* [14–14] cesti et a meme ceste δ. [15] tener totes δ. [16] ij δ. [17] δ *adds* a garanti. [18–18] qi serra somons &c. δ. [19] Lenfant δ. ϵ *inserts* Jeo voil averrer qe. [20] Agnes δ. [21] ne puisse ieo δ.

Passeley. Sir, whereas they say that Margery's entry ought not to harm them since she is a bastard, we are ready to aver that she is legitimate.

Spigurnel J. We see that the demandant is an infant under age and that this Margery of whom you speak is alive and vouchable. The case would be different if she were dead—seeming to infer that the exception would be receivable.

The tenant was consequently forced to vouch her.

Cambridge. Then we vouch this Margery.

Malmerthorpe counterpleaded to the voucher and said that [the tenant] was the first to abate himself etc. after the death of their ancestor etc.

Passeley. Margery was seised and alienated. Ready etc.

The other side joined issue. Therefore etc.

ANON. *v.* ANON.

I.

Richard, an infant under age, brings a writ of cosinage against one Agnes and demands certain tenements of the seisin of one Thomas his cousin; which tenements, by reason of Thomas dying without heir of his body, descended etc. to William as his brother; from William to Roger as William's son; from Roger to Adam as Roger's son; from Adam to Richard as Adam's son; which Richard is the present demandant.

Passeley defends and says:—We vouch to warranty, by aid of this Court, one Walter Stone who will be summoned in this county.

Cambridge. I will aver that you yourself are the first abater upon the tenements after the death of Thomas our cousin. Ready etc.

Passeley. Then I will tell you the facts. Thomas was seised as of his heritage, and out of his seisin he enfeoffed Walter Stone. Walter re-granted the tenements to Thomas and Agnes, Thomas's wife, for their lives, with reversion to himself; and here you have the deed which testifies the grant. Agnes now vouches this Walter to warrant this estate to her. Judgment whether the voucher is not good enough.

Cambridge. Thomas was seised of the tenements in his demesne as of fee the day he died. Ready etc.

Passeley. To that averment we cannot be party without Walter.

Cant.[1] si jeo graunte cest voucher jeo abate mon bref demene.

[2]*Hervi.* nenil qar qant Walter vendra il peut doner au tiel response com peut Agnes viz. qe T. ne fust pas seisi en son demene com de fee le jour &c & issint nul meschief pur vous tut soit le vocher[3] suffert.

Spigurnel nous chargoms mout qe vous avez porte vostre bref vers Agnes com vers tennante & ele dit qe T. ne fust mie soul tenant einz joyntement ove Agnes & de ceo met avant fet en evidence mes si ele fust abateresse & vochast &c ou priast eide ceo serrait autre mes la ou vous supposez qe T. fust seisi [4]en son demene[5] &c & issint [6]supposez qe il[7] morust soul tenant la dit ele qil navoit rien si noun joynt ove ly & ceo chargoms nous mout.

Cant. si nous grauntoms le voucher nous abateroms nostre bref demene.[8]

Spigurnel non[9] qar vous pledez pur un enfaunt denz age qi ne peut son bref abatre pur mesplede.

Fris. [10]Sire cest mout a charger[11] mes sil fust dage il serreit autre. Item[12] jeo vey si Agnes vers qi le bref est porte feist defaute apres defaute W. qele vouche sil vensist devant jugement rendu il serroit receu a defendre son droit par qey &c.[13]

Stonore mes sil graunte le vocher il pert saccioun qar [14]donqes graunte il[15] qe son cosyn ne morust pas seisi[16] en son demene [17]com de fee.[18]

Fris. cest verite mes court peut mout eider &c.

[19]II.

Johan le Taverner porta son bref de Cosinage vers une Angnes qe demand certein tenemenz de la seisine Ricard son cosyn.

Pass. Angnes vous dit qe ele tient ces tenemenz a terme de sa vie de les Willem de Nortone et de cel estat vouche a garantir meme celi W.

Cant. A ceo vocher ne deuet estre ressu qar vous estes la primere qi se abati en ces tenemenz apres la mort Ricard nostre cosin prest etc. jugement etc.

Pass. A ceo ne deuet auenir qar veit cy le fet W. qe testifie le les a Ricard nostre baron et a nous[20] a terme de nos ij. vies et la revercion

[1] δ *adds* pur *Lenfare.* [2–8] δ *omits.* [3] *from* ϵ ; γ *has* meschief. [4–5] *from* ϵ. [6–7] *from* ϵ. [9] nanyl δ. [10–11] ϵ *omits.* [12] estre ceo qe δ. [13] δ ends here. [14–15] si il graunte le vocher il grante ϵ. [16] *from* ϵ. [17–18] ϵ *omits.* [19] Text of (II) from η collated with θ. [20] *from* θ. η *repeats* nostre baron.

Cambridge. If I were to consent to that voucher I should abate my own writ.

STAUNTON J. No, no; for when Walter comes it is open to him to make the same answer as is open to Agnes, to wit, that Thomas was not seised in his demesne as of fee upon the day he died etc., and so you will not be prejudiced though the voucher be allowed.

SPIGURNEL J. We lay great stress upon the fact that you have brought your writ against Agnes as tenant, and that she says that Thomas was not sole tenant but jointly with herself, and she puts in a deed in proof of this. Now if she were an abateress and vouched etc. or prayed aid, the case would be different. But your case is that Thomas was seised in his own demesne etc., and so you suppose that he died sole tenant, while Agnes says that Thomas had naught save jointly with her; and to that we attach much importance.

Cambridge. If we allow the voucher we shall abate our own writ.

SPIGURNEL J. Not so, for you are pleading on behalf of an infant under age whose writ cannot be abated by mispleader.

Friskeney. Sir, that is the important point. If Richard were of age it would be another matter. And then I see this, that if Agnes against whom the writ is brought were to make default after default, Walter, whom she vouches, would be received to defend his right if he came before judgment given; wherefore etc.

Stonore. But if Richard allows the voucher he loses his right of action, for he would thereby admit that his cousin did not die seised in his demesne as of fee.

Friskeney. That is true; but the Court can give material relief etc.[1]

II.

John Taverner brought his writ of cosinage against one Agnes demanding certain tenements of the seisin of Richard his cousin.

Passeley. Agnes tells you that she is tenant of these tenements for the term of her life by the lease of William Norton, and she vouches that same William to warrant such estate to her.

Cambridge. You ought not to be received to that voucher, for you were the first to abate yourself upon these tenements after the death of our cousin Richard. Ready etc. Judgment etc.

Passeley. In that you ought not to succeed, for here you have William's deed setting out the lease to Richard our husband and to ourself for the term of our two lives with reversion to William.

[1] See STAUNTON J.'s speech on the next page. *Friskeney* again seems to be speaking rather as *amicus curiæ* than as counsel.

a W. Jugement depus qe nous mustroms nostre estat a la court et altre estat ne clamoms jugement si par tel averement nous[1] pusset de nostre vocher barrer.

Cant. Ricard qi est nome ou Angnes en le fet est meme la persone de qi nous pernoms nostre title donc si nous grantisoms le voucher sur le fet qil met avant nous conustroms le revers de nostre accion sauer qe Ricard ne auoit for qe terme de vie la ou nous supposoms qil morust seisi en son demene com de fee et abatre nostre bref demene.

Staunt. Johan qi porte le bref est deinz age qi ne put pas le vocher accepter son bref abattre et tot fut il de pleine age vous nestes pas eide par statut de contrepleder ceo vocher qar est a entendre qant tenant en fee simple vouche et estre ceo en cas de vocher prier eide et prier estre ressu qe chet[2] en contraire de accion qe est use court le deit agarder de office et issi ne serra pas bref ne accion[3] perdu, pur quei estoise le vocher etc.

[4]ANON. *v.* ANON.

De consanguinitate.

Un porta bref de cosinage et conta de la seisine Robert de Robert a Richard com a fiz et heir de Richard a William com a fiz et heir de William com a fiz et heir de William pur ceo qil morust sanz heir de son cors resorti etc. a Johan com a oncle et heir frere Richard pere William de Johan a Thomas com a fiz et heir de Thomas a Robert com a fiz et heir qi ore demande.

Westcote. Par cete bref supposet vous Robert de qi seisine vous auet conte estre vostre cosin. Par la decente qe vous auet fet Robert est vostre besael ou vous purret auer eu bref de besael jugement de bref.

Toudebi. Nous auoms conte de la seisine Robert et auoms fet la decente a Richard de Richard a William qi a tendi estat et auoms fet le resort de William pur ceo qil morust sanz heir etc. a Johan com a uncle qi est en la line costeine et issi linealment a nous jugement.

Spigurnel. Le resort qe vous auet fet de William a Johan si est en la droite line eaunt regard a Robert de qi seisine etc. et de Johan linealment a vous et issi ensut qe Robert est a vous besael et estre ceo

[1] *sic* in both texts. [2] chesent θ [3] θ *adds* de demandant. [4] Reported by η only.

Judgment whether, seeing that we prove our estate to the court and claim naught beyond that, you can bar us from our voucher by such an averment.

Cambridge. The Richard who is named in the deed with Agnes is the person from whom we derive our title. If, then, upon the strength of the deed which he tenders, we allow the voucher, we shall be admitting the opposite of our case, that is to say we shall be admitting that Richard had naught beyond a life term, when our case is that he died seised in his own demesne as of fee; and so we should abate our own writ.

Staunton J. John that brings this writ, being under age, cannot abate his writ by allowance of a voucher; and even though he were of full age the Statute[1] would be no help to you in counterpleading to this voucher, for it applies only when a tenant in fee simple vouches. But beyond this, in the case of a voucher in opposition to your action, you can pray aid and to be received, and the Court is bound to grant you its official assistance; and so neither writ nor action will be lost; and so let this voucher stand etc.[2]

ANON. *v.* ANON.

Cosinage.

One brought a writ of cosinage and counted of the seisin of Robert. [He made the descent] from Robert to Richard as Robert's son and heir; from Richard to William as Richard's son and heir; from William, because he died without heir of his body, the succession resorted to John his uncle and heir, being the brother of Richard that was William's father; from John to Thomas as John's son and heir; from Thomas to Robert, the present demandant, as Thomas's son and heir.

Westcote. By this writ you suppose Robert of whose seisin you have counted to be your cousin. But by the descent which you have made Robert is your great-grandfather; and in this case you could have brought a writ of *bisael.* Judgment of the writ.

Toudeby. We have counted of the seisin of Robert and have made the descent to Richard, from Richard to William who held by succession; and we have made the resort from William, because he died without heir etc., to John his uncle, who was in the collateral line, and then lineally to ourselves. Judgment.

Spigurnel J. The resort which you have made from William to John is in the direct line having regard to Robert of whose seisin etc. and the descent is lineal from John to yourself; and so it follows that Robert is your great-grandfather. And further than this, Richard

[1] *Statute of Westminster I,* cap. 40.

[2] The text is obscure, but the meaning is probably as given above.

nestouereit point en bref de possession de auer fet mention de Richard et de William tot atendiret il estat qant la decente poit auer este fete sanz euz et nepurqant roules et quiteclaime put estre vse de ceus qe atendirent estat et pur ceo qe Robert de qi seisine etc. fut besael al demandant et le bref suppose cosinage le bref sabatera par jugement.

COVENAUNT.

[1]BOKELONDE *v.* LEANORE.

Couenaunt ou lespecialte voleit qe la couenaunt se prist entre iiij. soulement et a greignour surte ieo troefs R. de L. et autres qe se obligent etc. uers queux le bref fut porte et fut chalenge pur ceo qil ne parlerent pas en le couenaunt et non allocatur quia per appositionem sigilli quilibet loquitur et obligatur.

[2]Precipe [3]Rogero Leukenore[4] quod [5]iuste [6]et sine dilacione[7] teneat couencionem [8]Johanni de Bokelonde[9] inter eos factam de duobus[10] molendinis ad opus ipsius Johannis[11] apud Madenstan[12] sumptibus [13]ipsius Rogeri in[14] maeremio et carpentaria de nouo construendo.[15] Et nisi etc.

Mesmes cestui Johan porta au tiel bref uers autres treis[16] seueralment et counta[17] qe a tort ne lui tient couenaunt entre eux fete ut supra in brevi. Et pur ceo a tort qe certein iour lu et an couynt entre un Pers le Mazoun et cestui Johan de B. qe lauaunt dit Pers freit deux molyns ut supra a ses custages demene a certein temps etc. Et a greignour surte si troua il cesti Roger de Leukenore et treis autres nomement A. B. et C. qe se obligerunt ouesqes lauauntdit Peres le Mazoun a fere lauauntdite ouereyne et a tenir pleinement lescouenaunz auantdiz saver chesqun en lentier les queux molyns auauntdiz Robert de Leukenore nad mie fet selom les couenaunz [18]avantditz. E ensynt est il ale encontre covenant a tort[19] etc.

Caunt. Jugement de cest counte qe au comencement du counte il counta deuers nous com deuers[20] principal de cest couenaunt. Et puis dit il en demoustrance qe un couenaunt se prist entre cesti Johan

[1] Reported by α, γ and ϵ. Text from α collated with γ and ϵ. Names of the parties from E.R. [2] γ *adds* Il yavoit un bref de covenant tiel. [3–4] J. de D. γ. [4] Leanore ϵ, E.R. [5–7] γ *omits.* [6–7] etc. ϵ. [8–9] E. de B. γ. [9] Blokande ϵ. [10] ij. γ. [11] E. γ. [12] N. γ. [13–14] ejus et γ. [15] *from here to end of the case* γ *reads* et counta sur le bref et le play plede a pays. [16] ϵ *adds* vers chesqun. [17] ϵ *adds* en ceste forme. [18–19] *from* ϵ. [20] ϵ *adds* partie.

and William ought not to have been named in a possessory writ even though they held by succession, seeing that the descent might have been made without them, though releases and quitclaims made by such as have held by succession, may be used; and because Robert of whose seisin etc. was the demandant's great-grandfather, while the writ supposes that he was his cousin, the writ will be abated by judgment.

COVENANT.

BUCKLAND *v.* LEANORE.

Covenant where the specialty disclosed that the agreement was entered into by four parties only, but that for greater security the obligee added R. of L. and others who bound themselves etc. Against these the writ was brought. Objection was taken that they were not parties to the covenant, but was disallowed on the ground that by sealing the covenant they became parties to it and were bound by it.

Command Roger Leukenore that justly and without delay he perform the contract entered into between him and John Buckland for the construction of two mills at Maidstone for the use of the said John by and at the cost of the said Roger from new building material and timber. And unless etc.

This same John brought similar writs against three others, against each one of them severally; and he counted after manner following, that is to say, that they had wrongfully neglected to carry out the contract made between them as set out in the writ. And wrongfully for this reason. For whereas in a certain place and upon a certain day and year it was agreed between one Peter the Mason and the said John Buckland that the aforesaid Peter the Mason should build two mills as above within a certain time at his own charges etc.; and whereas for greater security the aforenamed Roger Leukenore and three others, to wit, A., B. and C., had bound themselves together with the aforesaid Peter the Mason to carry out the said works and to perform fully the aforesaid agreement, that is to say each had made himself severally responsible for the full performance of it; yet, notwithstanding this, the said Roger Leukenore has not built the said mills as he had contracted to do; whereby he has wrongfully failed to carry out his agreement etc.

Cambridge. Judgment of this count, for at the beginning of the count he counted against us as against a principal party to this agreement. Then he said in his declaration that an agreement had been

et un Peres le Mazoun etc. et qe Roger de Leukenore a greignour surte se obliga issi nous suppose il estre plegge jugement du counte.

SPIGURNEL. Nanyl[1] il ne dit mie qe vous estes plegge il dit qe Roger et [2]les autres[3] se obligerent en lenter com principals a parformir cest couenaunt par quei responez etc.[4]

Caunt. Oy del escrit du couenaunt.

Et voleit lescrit qe le couenaunt se prist entre Johan de B. et Peres le Mazoun soulement [5]e voloit ausynt[5] et a greignour surte trouer ieo troefs Roger de Leukenore et A. et B. et C. qe se obligerent chescun en lentier &c.

Caunt: Ore demaundoms jugement dil houre qe vous auez counte qe Roger et les autres se obligerent et ceo ne tesmoigne paas vostre escrit qe Roger[6] ne parle mie en lescrit[7] qe lescrit dit et a greignour surte ieo troefs [8]un tiel etc.[8] Et issi parle Pers soulement et [9]ne mie Roger et[9] demaundoms jugement.

SPIGURNEL. Si un home se oblige a vous en dette [10]par escrit[10] et die en lescrit et a greignour surte ieo troef un tiel[11] qe se oblige et il met le seal al escrit coment qil ne parlent pas ceo qe lautre parle [12]il afferme par le mettre du seal par quei responez au fet.[12]

Caunt. Sire, nous conisoms bien le fet mes nous vous dioms qe Peres le Mazoun fit le meryn de cest molyn et en carpentrie sufficialment[13] sulom les couenaunz taunt com a lui appendeit mes pur ceo qe Johan de B. duist auer troue [14]de fer la oueraygne[14] saver clowes [15]de fer[15] et totes autres choses de feer et ne les voleit issi demora [16]le oueraygne[16] defete par sa defaute demeigne prest etc.

[17]Et les autres le reuers. Et troue fut par enqueste qe lauauntdit Pers auoit fet la carpentrie des molins etc. mes il ne les auoit paas assis Car ceo fut vncore en une mesoun en Maidenstan et disoient qe lauauntdit Johan de B. duist auer troue le fer. Et pur ceo qil ne les auoit paas assis en le lieu ou etc. ne le mereyn nauoit pas coche al lieu etc. ne pooent attacher defaute en Johan de B. qe des clowes ne de fer nauoit il a fere tauntqil eust ouery en le lieu et comence etc. Fut agarde qe lauauntdit Johan recouerast ses xx. marks qil auoit paie a lauauntdit etc. auaunt la mein uers Roger et Roger en la mercy saunz auer regard a la

[1] *from* ϵ. [2–3] chesqun des autres par sey ϵ. [4] le counte par la est assez bon ϵ. [5–5] *from* ϵ. [6] ϵ *adds* e les altres. [7] ϵ *adds* ne en lescrit ne se conissont poynt estre obligez. [8–8] Roger e les altres qi se obligent ϵ. [9–9] nul altre par quei nous ϵ. [10–10] *from* ϵ. [11] ϵ *adds* e un tel &c. [12–12] est afferme. Par quei dites outre ϵ. [13] *from* ϵ. [14–14] tute la overaigne de fer ϵ. [15–15] *from* ϵ. [16–16] les molyns ϵ. [17] *From here to end* ϵ *has*: Alii e contra. Ideo &c.

made between this John and one Peter the Mason etc., and that Roger Leukenore had bound himself by way of further security; and so he admits that we are merely a pledge. Judgment of the count.

Spigurnel J. No, no; he does not admit that you are a pledge. He says that Roger and the others fully bound themselves severally as principals to carry out the agreement. So you must answer.

Cambridge. Let us have the written agreement read.

The document recited that the agreement is made between John of B. and Peter the Mason only. Then it goes on to say that for greater security Roger Leukenore and A. and B. and C. are added, each of whom severally makes himself responsible for the whole performance of the agreement etc.

Cambridge. We ask now for judgment, seeing that you counted that Roger and the others were bound, in which you are not supported by your written agreement, for the writing says that 'for further security I add such and such ones' etc. Consequently it is Peter alone who is speaking, and not Roger; and we ask judgment.

Spigurnel J. If a man by a writing confesses himself indebted to us, and the writing goes on to say 'and for further security I procure such an one who binds himself,' and this latter affixes his seal to the writing, how can you argue that he does not say the same thing as the other man says? He affirms it by the fact of affixing his seal; and so you must answer to the deed.

Cambridge. Sir, we fully admit the deed; but we say that Peter the Mason sufficiently completed what he was bound to do in connection with the building of the mills, that is, the provision of timber and the performance of carpenters' work; but this John B. who ought to have provided what of iron materials was necessary, to wit, iron nails and all other necessaries of iron, refused so to provide them, so that the work could not be completed through the fault of that same John. Ready etc.

And hereupon issue was joined. And the jury found that the aforesaid Peter had completed all the carpenters' work for the mills etc.; but had not put the timber into position, it still lying in a shed in Maidstone. And they said that the aforesaid John B. ought to have provided the iron. But seeing that Peter had not carted the timber on to the site of the mills nor put the carpentered beams into position they could not blame John B. for not providing the nails and other iron necessaries before the timber was on the ground and work had been begun. And so it was adjudged that the aforesaid John should recover against Roger the twenty marks which he had paid in advance to the aforesaid etc., and that Roger be in mercy, no regard

carpentrie ou a ceo qil auoit ouery en le founz de lieu ou les molyns dussent estre bien de cent souche de meryn qe fut pery et purre pur ceo qe tout fut sa defaute et le dit Johan de rien amende et ses demages etc.

Note from the Eyre Roll.

John's count was :—quod cum quinto die Marcii anno regni domini Edwardi Regis patris domini Regis nunc tricesimo quinto apud Maydenstan covenisset inter ipsum Johannem de Boclonde et quendam Willelmum de Suthflete Charpunter de Maydenstane videlicet quod predictus Willelmus construeret eidem Johanni de Boclonde duo molendina apud Tessend in predicta villa de Maydenstan sub uno cumulo unum molendinum videlicet ad blada molenda et aliud molendinum fulrecium[1] de bono et grosso maeremio quercus ipsius Willelmi Ita quod predicta duo molendina parata essent in omnibus que ad carpentariam pertinent ad sumptus et custagia ejusdem Willelmi ad ultimum ad Gulam Augusti[2] proximo sequens pro viginti et una marcis de quibus idem Johannes solvit prefato Willelmo viginti marcas promanibus et residuum ei solverat antequam predicta molendina fuissent parata etc. Et si defectus carpentaria eorundem molendinorum inventus fuerit etc. predictus Willelmus molendina illa corrigeret et repararet per visum et ordinacionem quorundam Walteri Colyn Willelmi Cramford Ricardi le Pestour et Johannis Makchayt vel per aliquos ipsorum si omnes interesse non possent etc. Et ad securiter hujus convencionis ut predictum est tenendum idem Willelmus invenit eidem Johanni plegios scilicet predictos Reginaldum Johannem le Machun Rogerum et Nicholaum qui simul cum predicto Willelmo conjunctim et diversim scilicet unusquisque eorum principaliter ad predictam convencionem tenendum per scriptum suum obligavit se teneri etc. Predictus Johannes de Boclonde sepius requisivit predictos Rogerum Johannem le Machun Reginaldum et Nicholaum scilicet unumquemque eorumdem singillatim quod predictam convencionem ei tenerent etc. qui convencionem illam eidem Johanni de Boclonde hucusque contradixerunt etc. unde dicit quod deteriora-

[3]NOTA DE DETTE.

[4]I.

Nota en un dede. Si un homme seit oblige en certein dette par soun fet et en mesme le fet soit contenue un tiel clause qe a greignour surety trover[5] a ad trove meinpernours A. et B. des queux chescun se

[1] *Sc.* a fulling mill. [2] The first day of August. See *Gule* in O.E.D.
[3] Reported by *a*, *aa*, *β* and *θ*. [4] Text of (I) from *a* collated with *β*. [5] *β omits* trover.

being had to the carpentering or to the work done in the streams where the mills were to have been built, a good hundred trunks of timber having been used that were now perished and rotten, for that was all his own fault; and the said John was to pay no compensation for it, and his damages etc.

Note from the Eyre Roll—*continued.*

tus et dampnum habet ad valenciam Centum Marcarum. Et inde producit sectam etc. Et profert quoddam Scriptum sub nomine predictorum Rogeri et aliorum quod predictam convencionem testatur etc.

The plea was :—Et Rogerus et alii per attornatum suum veniunt et defendunt vim et injuriam quamcunque etc. Et bene cognoscunt predictam convencionem etc. et dicunt quod predictus Johannes de Boclonde injuste queritur etc. Quia dicunt quod predictus Willelmus de Suthflete qui fuit pars principalis predicte convencionis etc. de maeremio et carpentaria et aliis que ad construcionem predictam pertinebant paraverat et providit (*sic*) secundum formam convencionis predicte si predictus Johannes de Boclonde ferrum et clavos necessarios ad construcionem predictorum molendinorum invenisse voluit qui quidem Johannes de Boclonde licet per ipsum Willelmum sepius inde fuisset premunitus ferrum et clavos invenire non curavit etc. Ita quod per ipsum Johannem stat quominus predicta molendina remanerent construenda etc. Et de hoc ponunt se super patriam et super predictos Walterum Colyn Willelmum Cramford Ricardum le Pestour et Johannem Makchayt per quorum visum et ordinacionem etc.

The verdict was :—quod predictus Johannes de Boklonde solvit predicto Willelmo de Suthflete viginti marcas promanibus pro predictis molendinis construendis et quod in ipso Willelmo carpentario defectus fuit quominus predicta convencio completa fuit.

The judgment was :—quod predictus Johannes de Boklonde recuperet dampna sua que taxantur per eosdem Justiciarios ad triginta marcas sex solidos et octo denarios[1] et predicti Rogerus Johannes le Machun Rogerus et Nicholaus in misericordia etc.[2]

NOTE ON DEBT.[3]

I.

Note as to a deed. If a man be bound in a certain debt by his own deed, and if in the same deed be added a clause to the effect that for greater security the obligee has found sureties A. and B., each of whom

[1] The clerks received forty shillings thereout.

[2] *m.* 44.

[3] See *Buckland* v. *Leanore*, p. 9, *supra*.

conust estre oblige en le tut coment qe eux ne parlont nient en ceo fet mes il parle pur eux en la terce persone et il mettent lour seals il serrount taunt avaunt obligez com par mi lour fet demene :—par SPIG :—pur ceo qil afferment le fet par mi le mettre de lour seals et assez grauntent ceo qe lautre a ad fet pur eux :—ut patuit in itinere Cancie.

[1]II.

Nota qe si home soi oblige en dette ou en covenant par escript et met un tiel cause en lescript et ad majorem hujus rei securitatem tales inveni fidejussores quorum unusquisque in solvendum se obligavit qe coment qe nul ne parle fors le principall si les autres metunt lor seales il accertent ceo qe le principall parle et se font mesme principalls.—par SPIGURNEL.

[2]PESSINDENNE *v.* LE POT.

Covenaunt ou excepcioun fut mis a bref pur ceo qe lespecialte voleit qe le covenaunt se prist entre le pleintif et ceux nomez en le bref et plusours autres et le bref fut porte devers deux et nient plus et non allocatur pur ceo qe en la fyn dil especialte le obligacioun se fit a chesqun severalment. Item chalenge pur ceo qe le bref voleit de xxvj. acres de terre et lespecialte voleit de toutes les terres en tiel lieu etc. et al drein abatu sur ceo qil avoit un jointenaunt nient partie al covenaunt.

Precipe [3]Roberto Pot[4] quod teneat Philipo de Issindenne[5] et Roberto fratri ejus convencionem inter eos factam de xxvj.[6] acris terre ipsorum Philipi et Roberti in Waterinhesham[7] sumptibus ipsius Roberti intrandi et a mari includendi et nisi fecerit etc. tunc.

Lauf. counta en ceste fourme qe Robert le Pottere a tort ne tient covenaunt a Philip de Issindenne[8] et Robert soun frere entre eux fete de xxvj.[9] acres de terre in W. a ses coustages entrer et de la mer enclore et pur ceo a tort qe la ou il acovint[10] entrer les avant diz[11] certein jour an

[1] Text of (II) from *θ*. [2] Reported by *α*, *αα*, *β*, *δ*, *ζ*, and λ. Text from *α* collated with the others. Names of parties from E.R. The sidenote in *αα* is :—
'Covenaunt ou le bref fust chalenge pur ceo qe le bref voleit certeine nombre des acres et lespeciaute ne voleit.' *β* has the same note with slight variations.
[3–4] Robertum Prepositum *β*. [4] le Potere λ. [5] Possigt *δ*; Pessendene *ζ*; Furfurdenne λ. [6] xiiij. *ζ*. [7] Wirecesham *ζ*; Watrehegham λ. [8] Fursindenne λ. [9] xvij. *ζ*. [10] covint *β*; covient *ζ*. [10–11] *δ*, λ *omit*.

acknowledges himself severally bound in the whole sum, then, although neither of them speaks for himself in the deed, but the obligee speaks for them in the third person, yet if they affix their seals to such deed they shall be as fully bound by it as though it were their own deed; and this because by affixing their seals they affirm the deed and sufficiently endorse that to which the other has pledged them. By SPIGURNEL J. in the Eyre of Kent.

II.

Note that where one is bound by a writing in debt or covenant and adds to the writing a clause such as this: 'For the greater security of the performance of this matter I have found such and such sureties each one of whom severally binds himself as being responsible'; then, though none but the principal actually speaks in the writing, yet if the others affix their seals they assert that which the principal has said, and make themselves principals.—By SPIGURNEL J.

PESSINDENNE[1] *v.* POTTER.

Covenant where exception was taken to the writ because the specialty recited that the agreement was made between the plaintiff and those named in the writ together with several others, and the writ was brought against two only; but not allowed on the ground that in the conclusion of the specialty it was declared that each of those therein named bound himself severally. The writ was further objected to because it spoke of twenty-six acres of land, and the specialty spoke of all the land in a certain place etc. It was finally abated because a certain joint-tenant was not a party to the agreement.

Command Robert Potter that he perform the agreement made between him and Philip of Issindene and Robert, Philip's brother, that he, the said Robert Potter, should enter and protect from the sea at his own cost twenty-six acres of land in Waterinesham, the property of the said Philip and Robert; and unless he shall have done so etc. then etc.

Laufer counted in this wise: Robert Potter has wrongfully neglected to perform the agreement entered into by him with Philip of Issindene and Robert, Philip's brother, touching twenty-six acres of land in W., which land he, Robert Potter, agreed to enter and to protect from the invasion of the sea at his own charges. And wrongfully because it was

[1] I cannot identify any modern place-name with Pessindenne, which, however, occurs in the Eyre Roll in connection with other cases. The reporter writes "Issindene," which may very well stand for Essendine in Lincolnshire; but where there is a conflict between Roll and Year Book one is inclined to stand by the Roll.

etc. qe lavauntdit Robert le Pottere entreit et de la mer encloreit ses xxvj.[1] acres de terre [2]de Wale[3] certein noumbre des piez[4] en leesce par [5]desoutz et certein par[6] amount[7] etc. et[8] a ses custages entre le jour avauntdit et la feste Seint Pere ad Vincula prochein suant etc. et prendre pur chescun acre xxij.*s.* le quel argent il resceut [9]avaunt la meyn[10] deinz quele jour il nentra mie nencloust la terre avauntdite solonc les covenaunz avauntdiz par qei eux sunt sovent[11] prie qil lour tensit covenaunt il tenir [12]le dedit et uncore fet a tort et a lour damage de cc. *li.* etc.[13]

Malm. [14]defendit et demaunda ceo qil avoit[15] du covenaunt.

Ston. mist avaunt un fet qe tesmoigna [16]qe un[16] covenaunt se prist[17] entre[18] Robert le Pottere et [19]les avauntdiz Philip et Robert[20] et plusours autres [21]de toutes les terres[22] maresches entrer et enclore ut supra par qei etc.

Malm. [23]jugement du bref dil houre qe cel escrit tesmoigna un[24] covenaunt entre Robert le Pottere dune part et les avantdiz Robert et Philip soun frere et plusours autres daltre part et Robert et Philip soun frere soulement sount nomez en cesti bref et nemie les autres jugement de cestui bref.

Pass. [25]Le fet voet[26] en la fin[27] qe Robert le Pottere sest oblige[28] severalment a chescun par quei le bref est assez bon.

Wescote ad idem. Dil houre qil est oblige a chescun severalment nul[29] ne se put pleindre del[30] covenaunt enfreint [31]ove autres [32]par quei est.[33]

Malm. Uncore jugement du bref qe vostre bref voet qe nous vous tenoms covenaunt de xxvj.[34] acres de terre et lespecialte ne [35]parle mie[35] de certeins acres par quei nous demandoms jugement.

Westcote. Jeo pose qe vous me eusez done tote vostre terre qe vous eussez en tele vile[36] saunz fere mencioun des certeins acres et jeo fusse enpledez jeo porterai moun bref de garauntie de charte [37]devers vous[38] de certeins acres[39] et uncore serreit bref bon tut [ne] face la charte[40] etc. par la quel [41]jeo bie lier vous[41] a la garauntie[42] mencioun de certein noumbre des acres. Auxi par de za.

Stonore[43] ad idem. Lescrit voet qe vous tiegnez covenaunt de tote nostre[44] terre maresche en tele ville et vous dioms qe nous tenoms

[1] xvij. ζ. [2–4] tant de pees δ. [3] Walle ζ. [3–8] tant de peez en leez par de souz et tant par amounte etc. ζ. [5–6] decent et tant par δ. [7] β *adds* enycement. [9–10] pleinement devant maine ζ. [11] δ, ζ *omit.* [12–13] ζ *omits.* [14–15] quei avez ζ. [16–16] le ζ. [17] ζ *omits* se prist. [18] ζ *adds* le avantdit. [19–20] P. et R. son frere ζ. [21–22] ζ *omits.* [23] δ *and* ζ *add* demandoms. [24] le δ. [25–26] vous trouvrez ζ. [27] ζ *adds* del escrit. [28] δ *and* ζ *add* a tener covenant. [29] il δ. [30] de autri ζ. [31–33] qe a li meme ζ. [32–33] qe a luymeme δ. [34] xvii ζ. [35–35] fet mie mencion ζ. [36] δ, ζ *add* par chartre. [37–38] ζ *omits.* [38–39] δ *omits.* [40] δ *adds* mencion. [41–41] vous me biez lier δ, ζ. [42] δ, ζ *add* de tut la terre saunz fere. [43] *Thoud.* λ. [44] nos ζ ; δ *omits.*

agreed that the aforesaid Robert Potter should enter the aforesaid land upon a certain day, year etc. and, at his own charges, enclose the twenty-six acres of land with a wall of a certain number of feet in thickness at the base and a certain number at the top etc. between the day aforesaid and the Feast of St Peter in Chains then next ensuing etc.; the said Robert Potter receiving in respect of each acre the sum of twenty-two shillings, which said money he there and then received; but within the time limited he did not enter or enclose the aforesaid land as he had agreed to do as aforesaid. And though the plaintiffs have frequently called upon him to perform his agreement with them he has always refused and still refuses to do so, wrongfully and to their damage in the sum of two hundred pounds.

Malmerthorpe defended and demanded what proof there was of the agreement.

Stonore produced a deed which witnessed that an agreement was made between Robert Potter and the aforesaid Philip and Robert and several others, whereby Robert Potter agreed to enter and enclose all the marsh lands as above, wherefore etc.

Malmerthorpe. Judgment of the writ, seeing that whereas the deed witnessed an agreement made between Robert Potter of the first part and the aforesaid Philip and Robert, his brother, and several others of the second part, Robert and Philip his brother are alone named in the writ, and the others are not named. Judgment of this writ.

Passeley. The deed says at the end that Robert Potter is bound to each one severally; and so the writ is good enough.

Westcote, ad idem: Since Robert Potter is bound to each of the others severally any one of them may bring an action for a breach of a covenant made with [himself and] others. Wherefore etc.

Malmerthorpe. On yet another ground I ask for judgment of the writ. Your writ says that we made an agreement concerning twenty-six acres of land, while the specialty does not mention any definite number of acres. Upon this ground we ask for judgment.

Westcote. Put the case that you had given me all the land which you have in a certain place without saying definitely of how many acres it consisted and I were impleaded in respect of it. I should serve you with a writ of warranty of charter in respect of a definite number of acres, and that writ would be a good one, notwithstanding the fact that the charter by which I sought to bind you to warranty mentioned no certain number of acres. So in this case.

Stonore, ad idem: The deed states that you made a covenant touching all our marsh land in a certain town, and we tell you

terres contenaunt xxvj.[1] acres de terre par quei le bref est assetz bon.

Malm.[2] Ceo covenaunt chiet en especialte par quei il covient qe cesti[3] bref soit fondu sur paroles comprises en lespeciaute et nen pas sur vostre dit qe chiet en averement du pais.

Hertepol.[4] lescrit voet qe vous esclorez tut vostre[5] terre maresche et resceverez pur chescun acre xxvj.*s.* issi qe le covenaunt se esteint a chescun acre &c. et nous pleignoms de [6]cele terre de la quele[6] covenaunt nest paas tenue par quei nostre bref est assez boon et acordaunt a nostre especialte.

Toud. Uncore[7] ne devez estre responduz [8]a cestui bref[8] kar la ou il prient qe nous tenom covenaunt a [9]Robert et a Philipe[9] soun frere de xxvj.[10] acres de terre la vous dioms qe mesmes ceux Robert et Philipe ount un frere William[11] eygne de eux qe tient xvj.[12] acres de xxvj.[10] en severalte pur ceo qe les tenemenz sount tenuz en chevalrie et tint le jour de bref purchace par quei &c.

Wescote. Nous pernoms nostre actioun dun covenaunt par quei il covient qe vous diez qil tient en severalte &c. le jour du covenaunt etc. et qe vous responiez dount a dys[13] acres.

Toud. [14]William[15] tient en [16]comune ovesque vous les x. acres et en severalte les xvj. acres le jour de covenaunt et uncore fetz. Jugement du bref.

Wescote. [17]Il tient en comune ovesque nous[18] les xvj. acres et les x. auxi. Et pur ceo qil ne peut damages derreiner du covenaunt enfreint de la terre tenue en comune consideratum est quod nichil capiat per breve.

Note from the Eyre Roll.

The count was :—Quod teneat eis convencionem inter eos factam de viginti et sex acris terre ipsorum Philippi et Roberti fratris ejus in Wythtricheshamme sumptibus ipsius Roberti le Pot intrandis et a mari includendis etc. Et unde iidem Philippus et Robertus queruntur quod cum die Lune proximo post

[1] xvij. ζ. [2] *Toud.* δ. [3] vostre δ. [4] *Stonore* β. [5] nostre ζ. [6–6] ceo qe ζ. [7] ζ *omits.* [8–8] ζ *omits.* [9–9] P. de P. et a R. δ. [10] xvij ζ. [11] ζ *adds* par noun. [12] viij ζ. [13] ix ζ. [14] δ *and* ζ *add* Quant a les xvj. acres nous vous dioms qe. [15] δ, ζ *add* les. [16] From here to end of the case δ reads :—

severalte iour devant contract et quant a les x. acres nous vous dioms qe W. les tient en severalte ut supra et le remenant en comune &c. ut supra. Sire la dioms nous qil tient entere ouesqe nous. Pur quei agarde fut qil prist rienz par son bref.

[17] From here to end ζ reads :—

Par la ou vous dites qe William tient viii. acres en severalte ut supra et le remanent en comune Sire nous vous dioms qil tient lenter oveke nous en comune. Par quei agarde fut qil prist rien par son bref sed fuit in misericordia &c.

[18] vous λ.

that we hold twenty-six acres of land; consequently the writ is good enough.

Malmerthorpe. This agreement is contained in a specialty; consequently the writ must follow the words of the specialty and not your verbal assertion, which would be a matter for a jury to consider.

Stonore. The deed says that you will enclose all our marsh land, receiving for each acre thereof the sum of twenty-six shillings; so that the covenant applies to each several acre etc. and we complain in respect of every acre touching which you have not performed your agreement; and so our writ is good enough, and accords with our specialty.

Toudeby. For yet another reason you ought not to have answer to this writ; for whereas you say that we entered into an agreement with Robert and Philip, his brother, touching twenty-six acres of land, now we tell you that these same Robert and Philip have an elder brother who holds sixteen of these twenty-six acres in severalty, for the land is held by knight's service, and he held them on the day the writ was purchased, wherefore etc.

Westcote. Our action is founded upon an agreement etc. and so you must plead that the land was held in severalty on the day of the making of the agreement etc., and then you must answer as to the ten acres.

Toudeby. William held the ten acres in common with you, and the sixteen acres in severalty, and still does. Judgment of the writ.

Westcote. He held the sixteen acres in common with us, and the ten acres also.

It was ruled that the plaintiff could take nothing by his writ, as he could not succeed in a claim for damages for a breach of an agreement touching land held in common.[1]

Note from the Eyre Roll—*continued.*

festum Epiphanie domini anno Regis Edwardi patris Regis nunc tricesimo primo apud Wythtricheshamme convenisset inter ipsos Philippum et Robertum fratrem ejus et predictum Robertum Pot quod idem Robertus Pot intraret et includeret a mari predictas viginti et sex acras terre ipsorum Philippi et Roberti fratris ejus infra festum Sancti Petri ad Vincula proximo sequens per

[1] See *Introduction*, p. xiii.

Note from the Eyre Roll—*continued.*

Wallias de altitudine duodecim pedium ubicunque bassitudo fuit etc. dimittendo terram integram infra Walliam et extra per viginti et quatuor pedes faciendo fletas concordantes equaliter terre de la forlande per viginti pedes etc. scilicet quamlibet acram predictarum viginti et sex acrarum terre pro viginti et duobus solidis etc. quos quidem denarios idem Philippus et Robertus frater ejus prefato Roberto Pot tradiderunt etc. predictus Robertus Pot pluries per ipsos Philippum et Robertum fratrem ejus requisitus quod convencionem predictam eis teneret etc. convencionem illam eis non tenuit Immo omnino tenere contradixit etc. Unde dicunt quod

DARREIN PRESENTMENT.

[1]LABBE DE GLOUCESTRE *v.* HENRI FRERE COUNTE DE LANCASTRE.

Dreyn presente-ment.

Labbe de Gloucestre porta son drein presentement uers Henri frere[2] Counte de [3]Lancastre de[4] Maner de Cadwarlarder de Rey dont lavoesoun de leglise de seint Michel est membre ou il ont cele franchise qe nul bref ne court for le bref le Conte quia in Wallia jugement etc.

King. Ceo ne poet dire qar enz ceus houres portastes vous meme un quare impedit en la court le Roy et plaidastes ou ly a pais et issi a vostre sute demene la court le Roy seisi de play jugement si jurisdiction puissez ore chalenger.

Herle Qel issue prist ceo play.

Ber. Il vous dit qe vous pledastes a pais pur quei il ad dit assez qe dit le plee portez donqes record.

Herle Tot seit il ausicom vous dites vous naueret de ceo nul auantage qar nous sumes seisi de Maner qest un gros dont si partie seit demembre le seignour seit[5] a relier le al gros ailours ne put il pleder for en la court le Roy de qi il tint et ces tenans pledont en sa court com en cas un seignour tent un Maner qi est de ancienne demene [6]quant qi est en sa mein[7] si est franc fee et ceo qi est en la mein lez tenanz de la sok si est aunciene demene dont si le seignour se voile purchacer uers

[1] Reported by η and θ. Text from η collated with θ. [2] θ *omits.* [3–4] Lant de Horle Henri tiant le θ. [5] *sic* in both texts. [6–7] du Roie ou dautres Seignurs du fraunc fee qe qant qe est en le manere le Seignur θ.

Note from the Eyre Roll—*continued.*

deteriorati sunt et dampnum habent ad valenciam ducentarum librarum. Et inde producunt sectam etc.

The plea was :—Quod non debet eis inde ad hoc breve respondere etc. quia quod predicto die convencionis predicte facte quidam Willelmus de Pesyndenne frater predictorum Philippi et Roberti fratris ejus qui non nominatus in brevi tenuit predictas viginti et sex acras terre conjunctim cum ipsis Philippo et Roberto fratre ejus etc. Unde petit judicium de brevi etc.

Philip and Robert could not gainsay this, and so judgment was given that Robert Potter go away without day, and that Philip and Robert his brother take naught by their writ, but be in mercy for their false claim.[1]

LATEST PRESENTATION.

ABBOT OF GLOUCESTER *v.* LANCASTER.

Latest presentation.

The Abbot of Gloucester brought his writ of *darein presentment* against Henry, the brother of the Earl of Lancaster, of the King's Manor of Cadwallader, to which manor the advowson of the Church of St. Michael is appurtenant, and this manor, being in Wales,[2] possesses the franchise that no writ runs therein save the writ of the Earl. Judgment etc.

Kinghemsmede. That you cannot say, for only a little while ago you yourself brought a *quare impedit* in the King's Court before a jury and pleaded there; and consequently at your own suit the King's Court was seised of the plea. Judgment whether you can now challenge the jurisdiction.

Herle. What was the issue of this plea?

Bereford C.J. He tells you that you pleaded before a jury; so he tells you sufficiently what the plea says. Bring the record.

Herle. Though all be as you say, you will get no help from it; for we are seised of a manor that is a gross, of which if any part be detached the lord may re-attach it again to the gross. In other case he can only plead in the court of the King, of whom he holds; and those tenants [*sc.* of a severed parcel] plead in his court as in the case of a lord that is tenant of a manor of ancient demesne, where the land in his own hand is freehold, and that in the hands of the tenants of the soc is ancient demesne. When a lord of such a manor wants to take action

[1] *m.* 26.

[2] As to the course of the King's writ in Wales read *A Discourse against the jurisdiction of the King's-Bench over Wales by process of Latitat*, by Lord Camden, in Hargrave's *Law Tracts*, p. 376. Cf. also the Statute I Edward VI c. 10, in *Statutes of the Realm*, IV, p. 15.

acun[1] de tenanz sil bie relier la parcele qil veit demander al gros il ly couendra porter bref a la comune ley [2]et ne pas quant si lez tenanz pledent il pledont en la court le seignour[3] sic ex parte ista.

DE CARTIS REDDENDIS.

ANON. *v.* ANON.

[4]I.

Detenue des chartes ou defendaunt allegga qil mesmes fut saisi de la terre comprise dans les chartres et fut feffe par mesmes les chartres et lautre dyt qil fut seisi de soun tort demene par happir des chartres apres la mort un J. qy executour il fut qe auoit les chartres en garde et fut chace al auerrement.

[5]A porta[6] bref de detenue des chartres uers un William et demaunda deus chartres les queles[7] furent en la garde B. mere A. et il apres la mort B. cum executour[8] les detent et dit en sa demoustraunce ceo qe fut [9]contenuz en[10] les chartres.[11]

[12]*Caunt.* Nous mesmes sumes tenaunz des tenemenz contenuz en les chartres jugement si deuers nous qi sumes tenaunz des tenemenz contenuz en les chartres puissez les chartres derreiner.[12]

Herui.[13] Il vous dit qe les chartres furent[14] en la seisine[15] sa mere [16]et en sa garde[16] et vous com executour apres [17]la mort sa mere[17] les [18]preistes et les destenistes[18] de vostre tort demene par quei ceo nest pas respouns a dire qe vous estes tenaunt [19]des tenemenz saunz escuser vostre tort.

Caunt. Nous vous dioms qe nous sumes saisi des tenemenz et si nous fussoms enplede nous voucheroms soun feffour com assigne par un les chartres et autrement nous perdroms nostre voucher pur ceo qe nostre feffour nad rien dount fere a la value.[19]

Goldingtone. Auxi graunt meschief[20] serreit si vous vouchez A. qe sil ne[21] eust les chartres il [22]ne pout pas[22] voucher outre [23]mes perdreit soun voucher ou il peut voucher sil eust les chartres.[23]

Herui.[24] Ad idem si le defendaunt eust[25] les chartres vous ne les

[1] nul *θ*. [2–3] e iadumames les tenantz ne deyvant ailleurs pleder fors en la Court lur Seignur de auncienne demesne etc. *θ*. [4] Reported by *a*, *θ*, and λ. Text of (I) from *a* collated with λ. [5] λ *adds* Un. [6] λ *adds* soun. [7] ques λ. [8] λ *adds* B. [9–10] contenu danz λ. [11] λ *adds* &c. [12–12] λ *omits*. [13] Stantone. [14] λ *omits*. [15] garde λ. [16–16] esteans λ. [17–17] sa mort λ. [18–18] prites et deteinit λ. [19–19] et si nous fusoms enpledez nous vous vouchasoms par celes chartres et autrement nous perdroms nostre voucher qe serreit duresse λ. [20] duresse λ. [21] λ *omits*. [22–22] poont λ. [23–23] et si noun il perdreit sanz auer nul resceu a la value λ. [24] Sant (*sic*) λ. [25] auoit λ.

against a tenant and to re-attach to the gross again the parcel which he is claiming, he ought to bring a writ at common law; though it is not so when the tenants bring action. They must bring it in the court of the lord. So here.

DETINUE OF CHARTERS.

ANON. *v.* ANON.

I.

Detinue of Charters where the defendant alleged that he was himself seised of the land comprised within the charters and was enfeoffed by these same charters; and the plaintiff said that the defendant was seised by his own tort by reason of his having appropriated the charters after the death of one J. whose executor the defendant was, which J. had the custody of the said charters, and he was driven to aver this.

A. brought a writ of detinue of charters against one William and demanded two charters that were in the custody of B., A.'s mother, which William as B.'s executor detained after her death; and in his declaration he set out the contents of these charters.

Cambridge. We ourselves are tenants of the tenements comprised in the charters. Judgment whether you are entitled to recover the charters from us who are tenants of the tenements comprised in the charters.

Staunton J. He tells you that the charters were in the seisin of his mother and in her custody, and that you took them, as executor, after his mother's death and wrongfully detain them. Consequently it is no answer to say that you are the tenant of the tenements unless you also justify your tort.

Cambridge. We tell you that we are seised of the tenements, and if we were impleaded we should vouch as feoffor an assignee under one of the charters; and if we cannot do this we shall lose our voucher, for our feoffor has naught to give us to the value.

Goldington J. But just as great hardship would follow if you were to vouch A., for unless he had the charters he could not vouch over, and he would lose his voucher in circumstances where he would be able to vouch if he had the charters.

Staunton J., *ad idem.* If the demandant had the charters you would

[1]derreinerez iammes hors de sa seisine[1] par veye daccioun nient plus ne poez retenir par veie de excepcioun.

SPIGURNEL. [2]Si les chartres vous eussent este liueres par vostre feffour oue la terre ceo serreit asqune resoun pur vous mes il vous dit qe vous com executour apres la mort sa mere les preistes de vostre tort demene par quei etc.[2]

Caunt. [3]Nous vous dioms qe [4]cestui qe ore[4] porte cesti bref nous enfeffa de[5] ceux tenemenz et nous luiera la seisine et[6] les chartres [7]a une foiz jugement etc.

[8]SPIGURNEL. Ceo est bon respouns a barrer etc.[9]

Malm. qe[10] vous les preistes[11] com executour de vostre tort demene etc.

Et alii e contra etc.

Note from the Eyre Roll.

The plaintiff, according to the Roll, was Isabella the widow of Baldwin the goldsmith of Pulham. The defendant was Simon the cutler of Canterbury, executor of the will of Margery *la Cutillere.*

The count was :—quod cum quedam carta in qua continetur quod quidam Willelmus Cokyn feoffauit quendam Johannem le Caretere patrem ipsius Isabelle de uno messuagio cum pertinenciis in suburbio Cantuarie et eciam quedam alia carta in qua continetur quod idem Johannes feoffauit ipsam Isabellam de eodem messuagio extitissent in custodia predicte Margarite una cum ipsa Isabella infra etatem existente etc. cuius executor predictus Simon est dum vixit et que post mortem ipsius Margarite die Mercurii proxima ante festum translacionis sancti Thome martiris anno regni Regis Edwardi patris domini Regis nunc tricesimo quinto deuenerunt ad manus predicti Simonis executoris etc. at licet idem Simon per ipsam Isabellam pluries requisitus fuisset quod predictas cartas ei redderet cartas illas ei hucusque non reddidit immo reddere contradicit unde dicit quod deteriorata est et dampnum habet ad valenciam centum librarum et inde producit sectam etc.

Simon's plea was :—quod predictas cartas ei reddere non debet quia dicit quod predicta Isabella de seisina sua dedit predictum messuagium in predictis cartis contentum cuidam Rogero Aunsel et predicte Margarite tunc uxori ipsius Rogeri Habendum et tenendum eisdem Rogero et Margarite et heredibus suis in perpetuum. Et dicit quod predicta Isabella seisinam messuagii predicti una cum cartis predictis prefatis Rogero et Margarite liberauit. Et dicit quod predicta Margarita supravixit ipsum Rogerum et

[1–1] deneret ia derener λ. [2–2] Ad idem. autre serreit si vous ne les usset mie pris com executour mes puis qe les pristes de vostre tort demene a ceo qil dit vous dioms qe vous respondez outre λ. [3] λ *adds* Sire. [4–4] ele memes qe λ. [5] λ *adds* meme. [6] λ *adds* nous bailla. [7] λ *adds* tout. [8] λ *adds* HERUI et. [9] la partie λ. [10] λ *omits.* [11] λ *adds* ceux cartres.

never be able to recover them from him by way of action. No more, then, can you withhold them from him by means of an exception.

SPIGURNEL J. If the charters had been delivered to you by your feoffor together with the land, that would be some argument in your favour, but he tells you that after his mother's death you as executor tortiously took them; wherefore etc.

Cambridge. We tell you that he who now brings this writ enfeoffed us of these tenements, and delivered seisin thereof and these charters to us at the same time. Judgment etc.

SPIGURNEL J. That is a good answer in bar etc.

Malmerthorpe. [Ready to aver] that you took them tortiously as executor etc.

And thereon the other side joined issue etc.

Note from the Eyre Roll—*continued.*

postea de seisina sua feoffauit ipsum Simonem filium ipsius Margarite de medietate messuagii predicti habenda et tenenda eidem Simoni et heredibus suis imperpetuum. Et postmodum in ultima voluntate sua residuum messuagii predicti ei legauit et cartas predictas in vita sua ei liberauit etc. Et hoc paratus est verificare per patriam etc. unde petit iudicium si cartas predictas ei reddere debeat etc.

Isabella's replication, upon which issue was joined, was: — quod ipsa nunquam cartas predictas cum seisina messuagii predicti predictis Rogero et Margarite liberauit. Et quod carte predicte post mortem predicte Margarite amite ipsius Isabelle deuenerunt ad manus predicti Simonis executoris ipsius Margarite ut ille que fuerunt in custodia predicte Margarite custodiende ad opus ipsius Isabelle.

The verdict of the jury was:—quod predicta Isabella feoffauit predictos Rogerum et Margaritam de messuagio predicto et seisinam eis inde liberauit una cum cartis predictis sicut predictus Simon dicit.

The judgment was:—quod predictus Simon inde sine die et quod predicta Isabella nichil capiat per juratam istam set sit in misericordia pro falso clamore etc.[1]

[1] *m.* 47.

[1]II.

Un Johan porta son bref de cartis reddendis vers un William en les queux fuerent contenuz &c.

Cant. William est enherite de mesme les tenementz contenuz en les chartres et lui ceo jour seisi et nentendoms mie qe les chartres vers nous puisse dereiner.

Hervi coment enherite.

Cant. un Alice mere John qi heire &c. enfeoffa un Richard le quel ne [*sic*] enfeoffa &c.

Laufer. Nous avoms counte qe les chartres devindrent en vostre maine apres la mort nostre mere come son executor le quel vous ne dedites pas e demandoms jugement.

Stonore ad idem si les chartres fussent en le maine John Willem navendroit mie par voie daccion ne per consequens ne barra mie John par voie de excepcion.

Goldingtone. Jeo voie une duresse qe si William fust emplede et vochast a garrantir John il ne poert pas voucher outre sil nust sa chartre par quei &c. Et estre ceo per la chartre il poet barrer le demandant par cas de accion.

Spigurnel si Willem fust emplede il poet voucher com assigne par mesme le chartre par quei [2] sil voile aver la chartre derene puis la terre[3] set non dixit per judicium.

Ad alium diem Stauntone il unt counte qe les chartres vindrent en vostre garde apres la mort lor mere come executer par quel lez les poez vous detenir sans ceo qe vous les uses par la liverie celi qi avoit droit a les chartres par quei responez a ceo qil vous met sur.

Frisk. si jeo vous doun une terre vous navez droit a autre chartre fors a cele par la quele vous estez feffe sans ceo qe eles vous seyent liveres ove le terre.

Cant. John qore se pleint dona les tenementz compris en les chartres et la seisine livera et les chartres qore etc. a sa mere la quele enfeoffa un Richard le quel nous enfeoffa prist etc.

Laufer il ne les livera pas en la manere prist etc.

[1] Text of (II) from θ. [2–3] The text appears to be corrupt, and the translation given on the opposite page is only conjectural.

II.

One John brought against one William his writ of detinue of charters, in which were comprised etc.

Cambridge. William is inherited of these same tenements comprised in the charters, and is seised of them this day ; and we do not think that you are entitled to claim the charters from him.

Staunton J. How is he inherited of them ?

Cambridge. One Alice, John's mother, whose heir John is, enfeoffed one Richard, who enfeoffed etc.

Laufer. We have counted that the charters came into your hands, as being our mother's executor, upon her death ; and that you do not deny. And we claim judgment.

Stonore, ad idem. If the charters happened to be in John's hands William would have no right of action for them ; and, consequently, he cannot bar John's claim to them by an exception.

Goldington J. I see this difficulty. If William were to be impleaded and vouched John to warranty, John could not vouch over if he had not possession of the charters ; consequently etc. And, further than this, William can bar by the charter an action brought by the demandant.

Spigurnel J. If William were impleaded he could vouch as assignee under this same charter ; consequently he had better establish his title to the charter first and to the land afterwards : *but this was not said by way of judgment.*

Staunton J. upon another day. They have counted that the charters came into your possession as their mother's executor after her death. By what law can you detain these charters, seeing that you do not hold them by the delivery of one who had a right to them ? Consequently you must answer his allegation.

Friskeney. If I give you an estate you have no right to any other charter than that by which you are enfeoffed, unless you have livery of them together with the land.

Cambridge. John, the present complainant, granted the tenements comprised within the charters and delivered seisin and the charters that he is now etc. to his mother, who enfeoffed one Richard, who enfeoffed us. Ready etc.

Laufer. He did not deliver them as alleged. Ready etc.

DEBITUM.

[1]ESTHALLE ET HERLISON *v.* ESTHALLE.

I.[2]

De debito ou le obligacioun fut simple et un endenture condicionnel de couste et touz deux furent liverez a un G. et la condicioun fut emplie pus G. devia le obligacioun devint en les meins des executours ou lun executor fut mesme la persone a qy le obligacioun fut fet et pur ceo qe la partie ne poeit dedire le fet simple coment qe lautre lavoit com executour happe fut agarde qil recoverit sa dette non obstante qil li avoit bille pendaunt en mesme le Eyre de detenue de mesmes cel escrit et des autres.

Debitum. [3]Jon de Esthall et Richard Herlison[4] demandent par bille[5] c.*li.* vers Richard de Esthall en les qeux il lour fust tenuz par son escrit obligatore le quel ils mistrent [6]a la[7] court.

Caunt. defend et dit qe [8]il ne poeient rien demander par vertu de cel escrit qar il dist qe verite fust qe[9] covenant se prist entre eux qe Richard de Esthall vendreit[10] certein jour en Baunk et levereit un fyn etc. et sil ne feist qil feust tenuz [11]a eux[12] en c. *li.* par un escrit obligatore qe fust baille en owel meyn en le garde [13]G. de Heuwette[14] et nous [15]vous dioms qe nous[16] venimes etc. et levames la fyn etc. et pur ceo qe G. est mort et cesti Jon est son executor nous avoms bille ceins[17] pendaunt vers lui com executor a demander mesme lescrit hors de sa garde jugment si nous devoms [18]en cesti cas[19] a lui respondre.

Goldintone qey avez del covenant qe vous aleggez.

Malm. prest[20] daverer.

Stonore. conicez primes le fet.

Et a ceo fust il chace.

Par qey *Stonore* dit[21] del houre qe nous avoms mis avant[22] fet qest simple et saunz contradictioun[23] qe veut qil nous est tenu en c.*li.* et il alegge une condicioun de qey [24]il ne moustre rien qe ceo tesmoyne[25] ne il ne moustre acqitaunce [26]par quei nous prioms[27] jugement etc.

Fris. nous avoms bille vers lui com vers executor et demandoms cel escrit et nentendoms mye qe vous nous voilez chacer a respondre a mesme le fet taunt qe ceo plee soit termine.

[1] Reported by *a*, *aa*, *β*, *γ*, *δ*, *ϵ*, *θ*. [2] Text of (I) from *γ* collated with *δ* and *ϵ*. Head note from *a*. [3–4] un J. de E. and R. de H. *δ*. [5] un bille de dette *δ*. [6–7] avant en *δ*, *ϵ*. [8–9] *from ϵ*. [10] *δ adds* en court. [11–12] *δ omits*. [13–14] Geoffray Howet *ϵ*. [15–16] *from ϵ*. [17] ceynz *δ*. [18–19] *from ϵ*. [20] nous le voloms *ϵ*. [21] donqe demanda jugement *δ*; e nous jugement *ϵ*. [22] *δ adds* son. [23] *ϵ omits*. [24–25] tesmoigner il moustre qe voet (*sic*) *δ*. [26–27] *from ϵ*.

DEBT.

ESTHALLE AND HERLISON *v.* ESTHALLE.

I.

Debt, where the [original] bond was unconditional, and there was an indented conditioned penalty bond, both of which were delivered to one G. The condition was satisfied and G. died. The bond came into the hands of his executors, one of whom was one of the parties to whom the bond was made; and because the defendant could not deny the unconditional bond the court gave judgment that the executor should recover the debt though he had only obtained possession of the bond as executor and notwithstanding the fact that the defendant had a bill of detinue claiming this same bond and others pending against him in this same Eyre.

John of Esthall and Richard Herlison demand by bill one hundred pounds from Richard of Esthall, in which sum they say he was bound to them by his bond which they tender in evidence. Debt.

Cambridge defends and says that the plaintiffs cannot claim anything under this document; for, says he, the truth is that an agreement was entered into by the parties that Richard of Esthall should upon a certain day appear in Bank and levy a fine etc., and if he failed to do so then he was bound to the others in the sum of a hundred pounds; and the bond was deposited with an impartial party, to wit, one G. of Heuwette. We tell you that we appeared etc. and levied the fine etc., and because this G. is since dead, and this John is his executor, we have a bill pendant in this court against John, as such executor, calling upon him to deliver up this same bond. Judgment whether we ought to answer him in this present matter.

Goldington J. What evidence have you of the agreement which you allege?

Malmerthorpe. Ready to aver it.

Stonore. First of all admit the bond.

And that he was driven to do. Whereupon

Stonore said: Since we have produced an unconditional bond, which has been admitted, witnessing that Richard of Esthall is bound to us in the sum of one hundred pounds, and Richard alleges a condition of which he tenders no proof, and he produces no evidence of his discharge from the bond, we ask for judgment etc.

Friskeney. We have a bill against him as executor, and we are demanding this document, and we submit that you cannot call upon us to answer this same deed until this plea has been determined.

Pass. Tut soit il condempne la ou vous portez vostre bille e demandez lescrit de ly com del executor G. uncore vers ly ne poez autre chose recoverir fors qe damages par qey il covent qe vous respondissez a nous com a ceus a qi vous feistes lescrit.

Cant [1]*a Pas*[1] mes jugement serroit en ceo cas qe jeo recoverasse mes damages etc. et laccioun par vertu de cel escrit serroit anent ya touz jours.

Fris. si G. fust en vye et nous demandissoms lescrit vers ly nous serrioms bien[2] receu de averrer la condicioun [3]vers ly aussi[3] hic sed omnibus disputatur.

Spigurnel[4] pur ceo qe J. et R. mettent avant le fet Richard de E. qest simple et il alegge une condicioun[5] destourtre de la dette et de ceo ne moustre rien etc. ne nul autre chose qe ly peuse valer encountre lobligacioun[6] qest son fet si agard la Curt qe J. & R. recovere les c.*li* vers Richard de E. et lour damages de c.*s.* et Richard en la merci.

Note from the Eyre Roll.

The Count is :—quod cum predictus Ricardus [de Esthalle] die Veneris in festo sancte Caterine anno regni domini Regis Edwardi patris domini Regis nunc tricesimo quarto apud Esthalle per scriptum suum obligasset se teneri eisdem Johanni et Reginaldo in predictis centum libris solvendis ipsis Johanni et Reginaldo ad festum Pasche proximo sequens. Idem Ricardus licet sepius requisitus fuisset quod predictum debitum eis redderet debitum illud eis semper hucusque reddere contradixit et adhuc contradicit. Unde dicunt quod deteriorati sunt et dampnum habent ad valentiam viginti librorum. Et inde producunt sectam, et proferunt predictum scriptum quod hoc testatur.

The Plea is :—Ricardus venit et defendit vim et injuriam quando etc. Et bene cognoscit predictum scriptum esse factum suum set dicit quod hoc ei nocere non debet in hac parte. Dicit enim quod scriptum illud traditum fuit cuidam Galfrido de Hewete cujus executor predictus Reginaldus Herlison est ut in equa[7] manu custodiendum sub condicione tali videlicet quod si idem Ricardus veniret coram Justiciariis domini Regis de Banco ad quendam finem levandum inter predictum Johannem de Esthalle querentem et ipsum Ricardum de quibusdam tenementis in [8] infra certum diem etc. tunc predictum scriptum pro nullo haberetur. Et si per ipsum Ricardum staret quin finis in forma predicta levaret tunc scriptum illud in suo robore remaneret. Et dicit quod finis predictus ante diem predictum inter ipsos levavit in Curia predicta de tenementis predictis et hoc paratus est verificare si curia consideret. Unde desicut scriptum predictum devenit ad manus predicti Reginaldi qui nunc predictum debitum exigit simul etc. post mortem predicti Galfridi cujus executor

[1]–[1] *δ omits.* [2] *from* ϵ. [3]–[3] sic *δ.* [4] ϵ *adds* reherca la proces et dist. [5] *δ adds* de sey. [6] laccioun *δ.* [7] Altered from *equali.* See below. [8] There is a space left blank here in the Roll.

Passeley. Even though judgment should go against him in the matter of your pendant bill and you claim the document from him as from G.'s executor, yet you can recover naught from him save damages; and consequently you ought to answer us as being those to whom you made the writing.

Cambridge to *Passeley.* But in those circumstances the judgment would be that I should recover my damages etc., and all right of action under that writing would be annulled for ever.

Friskeney. If G. were alive and we demanded the writing from him, we should certainly be received to aver the condition against him. So here. *But this is doubted by all.*

Spigurnel J. Since J. and R. produce the deed of Richard of E., which is a simple deed, and Richard alleges a condition negativing the accrual of a debt but offers no evidence thereof, nor any other evidence that goes to release him from his obligation under his deed, the Court gives judgment that J. and R. recover the hundred pounds against Richard of E., together with damages to the amount of a hundred shillings, and that Richard be in mercy.

Note from the Eyre Roll—*continued.*

idem Reginaldus nunc existit petit judicium etc. ex quo paratus est verificare predicti scripti condicionem ut in equali[1] manu in forma predicta etc.

Judgment:—Quia predictus Ricardus cognovit predictum scriptum superius esse factum suum et non ostendit aliquod factum speciale quin predictis Johanni et Reginaldo in predicto debito debeat teneri nisi quod pretendit predictam verificationem que in casu isto contra scriptum predictum non est admittenda consideratum est quod predicti Johannes et Reginaldus recuperent predictas centum libras et dampna sua que taxantur per Justiciarios ad centum solidos versus predictum Ricardum et idem Ricardus in misericordia etc. Et sciendum quod predictum scriptum cancellatur hic in Curia.[2]

It is noted in the Roll that forty shillings out of the hundred awarded as damages went to the Clerks.

We learn from the *Coram Rege* Roll of Pasch. 8 Edward II that Richard paid £50 in cash and handed over goods and chattels to the value of £23 in partial satisfaction of the judgment against him. This seems to have exhausted his resources, or, at any rate, his willingness to part with them. Execution for the amount still owing was sued for and had in the King's Bench, but there is nothing to tell us what success attended it.

[1] Here *equali* has been left in the Roll as first written.

[2] *m.* 173 *d.*

[1]II.

Dette ou un R. granta de lever un fin des certains tenemenz a un J. et Reynaud par un fet endentee entre eux et si il nel levast qil serreit tenuz a les avant ditz en c. *li.* a paier les etc. a un certain jour et de ceo fit un fet simple qil a eux etc. apres le jour et le fet bailla a un G. qe si il levast la fin qe le fet a Richard fust rebaille et si noun a J. et R. a quel jour il[2] leva la fyn etc. et il avoit baille le fet qe tesmoigna qil fust tenu de lever la fin a mesme celui G. issi avoit il lun et lautre. G. devia et fist ses executours et fist Reynaud un de ses executours et [3]vers lui[4] happa lun fet et lautre et porta bref de dette ensemblement[5] ofve J. et recovera la dette[6] etc.

Johan de Esthalle et Reynald de Herlessoun se pleindront par bille qe Richard de Esthalle a tort leur detient c. *li.* les queux il lour deit.

Caunt. Qe avez de la dette.

Pass. mist avaunt le fet Richard qe tesmoigna qil fut oblige a J. et a Reynaud en c.*li.* saunz nule condicioun a paier a certein jour.

Malm. demaunda veue de fet et enparla sour le fet et revint et dit qe en asqun temps parlance y fut entre les avauntdiz Johan et Reynald et Richard qe Richard levereit un fin a les avauntditz Reynald et Johan de certeinz tenemenz a certein jour devaunt justices du Baunke et lavauntdit Richard se obliga par un escrit a les avauntdiz Reynald et Johan en c. liveres sil ne vensit a cel jour a lavauntdit fin lever a paier a un autre jour apres &c. le quel escrit fut baille par assent des parties en owele mayn[7] saver en la meyn Geffrei [8]atte Ewekt[9] et a bailler al avauntdite &c si la fin fut leve e a les avauntdiz J. et Reynaud si en Richard remansit qele ne se levast point et ceo par fet fete entre eux de couste le quel[10] fut endente dount Richard bailla sa partie a garder a meismes cestui Geffrei et mesmes cesti Richard vint au jour assis et leva cel fin etc. et demaundoms jugement si par nul fet qe fut fete par condicioun le quele nous avoms parfurny et ceo voloms averrer actioun puissez avoir.

[1] Text of (II) from *a* collated with *β*. Note from *aa* collated with *β*. [2] *β adds* il vint e. [3–4] il avoyt *β*. [5] *β omits* ensemblement *and has* pur ceo qil navoyt ensement. [6] *β adds* my lun fet ne lautre. [7] *β adds* cest a. [8–9] Attesweke *β*. [10] *β adds* fet.

II.

Debt, where one R. undertook to levy a fine of certain tenements to one John and one Reynard by an indented deed made between them upon the condition that if he did not levy such fine he should be bound to the aforesaid in a hundred pounds to be paid etc. on a certain day; and he gave them an unconditional bond that after such day he would pay to them etc. And the deed was deposited with one G. upon the understanding that if the fine were levied it should be returned to R. and, if not, then to J. and R. Upon the day agreed upon R. levied the fine etc. He had deposited the deed under which he was bound to levy the fine with that same G., so that he had neither one deed nor the other. G. died and appointed executors, appointing Reynard one of them. Reynard appropriated both the deeds and brought a writ of debt jointly with J. and recovered the debt etc.

John of Esthall and Reynard of Herleson made plaint by bill that Richard of Esthall wrongfully detained from them one hundred pounds which he owed to them.

Cambridge. What proof have you of the debt?

Passeley produced the deed of Richard which testified that he was unconditionally bound to pay to John and Reynard the sum of one hundred pounds upon a certain day.

Malmerthorpe claimed inspection of the bond. He imparled upon it; and, when he returned, said that at a certain time negotiations were entered into by the aforesaid John and Reynard and Richard, in the course of which it was agreed that Richard should levy a fine upon a certain day before the Justices of the Bench upon the aforesaid Reynard and John touching certain lands; and the aforesaid Richard bound himself in writing to the aforesaid Reynard and John that he would pay the sum of one hundred pounds to the said Reynard and John upon a certain subsequent day if by the time agreed upon he had not appeared in court to levy the aforesaid fine; and this writing was, by the assent of the parties, deposited in the custody of a neutral party, to wit, in the custody of Geoffrey Astwick, to be delivered to the aforesaid etc. if the fine were levied etc. and to the aforesaid John and Reynard if Richard neglected to levy it; and this was set out in a penalty bond made between the parties, which was indented; and Richard gave his part thereof into the custody of this same Geoffrey. And this same Richard came upon the determined day and levied this fine etc. And we ask judgment whether they can bring an action upon a conditioned bond, when we have performed the condition therein made and are ready to aver performance of it.

Pass. Nous avoms mis avaunt vostre fet qe tesmoigne ceste dette sur quel vous estes issue denparler et a ceo ne responez nient en grauntaunt ou dedisaunt par que nous demaundoms jugement.

Et furent chacez par la court a graunter le fet ou dedire.

Malm. Nous ne pooms le fet dedire mes le fet fu fet sur la condicioun avauntdit et livere a Geffrei en la fourme avauntdite et[1] vous dioms qe Richard aad cele condicioun enplie[2] par quei actioun est acru a demaunder lescrit vers Geffrei le quel Geffrei est mort et aad fet ses executours cestui Reynald qe ore demaunde ove les autres dount cesti Reynald aad hapee lescrit devers lui et demandoms jugement dil houre qe cest fet fut fete sur cel[3] condicioun le quele nous voloms averrer estre pleynement parfourni si par cel fet le quel [4]il est[5] avenuz saunz bon proces actioun puet aver.

Pass. Et nous jugement dil houre qe cest fet est simple par le quel vous estes oblige si vous puissez[6] averer un condicioun de la quele vous ne avez qe veut en countre vostre fet demene.

Fr. Nous demaundoms jugement desicom le fet fut livere a Geffrey par assent des parties sur certeine condicioun la quele nous avom parfourmy et avoms actioun a demaunder cel escrit vers les executours Geffrey si par [7]cel fet vers nous puissent[8] actioun avoir le quel fet com executours en countre nous par veie de excepcioun ne poent retenir.

Cant. ad idem. Si Reynaud en qy meins cest escrit est venuz[9] com executour Geffrei fut estraunge a cest fet et Johan qe ore demaunde ove Reynald portast[10] bref vers lui qil lui rendesit lescrit [11]et nous portassoms bref vers lui qil nous rendesit lescrit[12] jeo entenk qil serreit a nous livere et nent a Johan si nous pussom averrer la condicioun la quele nous tendoms ore daverrer et demaundoms jugement si par cel escrit actioun puissez avoir kar nous avoms bille pendaunt cy einz vers mesme cestui Reynaud et les executours Geffrei.

Spig. Ou est le fet devenuz qe testmoigne la condicioun.

Malm. Geffrei lavoit en garde et nous avoms bille pendaunt vers ses executours cesti Reynaud et altres de cel escrit et des autres.

Spig. Ceo fut folie a lesser vostre bastoun hors de vostre main.

[1] *β adds* nous. [2] paremple *β*. [3] tiel *β*. [4–5] vous estes *β*. [6] *β adds* avenir de. [7–8] cele fet pussez vers nous *β*. [9] devenuz *β*. [10] porte *β*. [11–12] *β omits*.

Passeley. We have put in evidence your deed which acknowledges this debt, and you have been out to imparl upon it; and yet you make no answer in regard to it, neither admitting it nor denying it. And so we ask for judgment.

And they were driven by the Court to admit the deed or to deny it.

Malmerthorpe. We cannot deny the deed; but the deed was conditioned as aforesaid, and it was deposited with Geoffrey after the fashion aforesaid; and we tell you that Richard has fulfilled the condition, and consequently he has become entitled to claim the return of the deed from Geoffrey. This same Geoffrey is now dead. He appointed as his executors Reynard, the present plaintiff, and others; and Reynard has appropriated the bond binding Richard. We ask judgment whether, seeing that the bond contained such a condition, and that we are prepared to aver that we have completely fulfilled that condition, you can derive any right of action from the bond, which you have not received by process of law.

Passeley. And we ask for judgment whether, this bond by which you are bound being an unconditional one, you can be entitled to aver a condition of which you bring forward no proof, against your own deed.

Friskeney. We ask for judgment whether, seeing that the deed was delivered to Geoffrey with the assent of the parties until a certain condition was fulfilled, which condition we have now performed, and that we have a right to bring an action against Geoffrey's executors for the return of this deed, the possession of this deed gives you any right of action against us. And you cannot, as executors, retain the deed, as against us, by your exception.

Cambridge, ad idem. If Reynard, into whose possession, as Geoffrey's executor, this deed has come, were no party to the deed, and John, who is now co-plaintiff with Reynard, were to sue him for the delivery of it to himself, I think that it would be delivered to us and not to John, if we succeed in averring the condition which we are now ready to aver. And we ask judgment whether upon that deed they can have any action, seeing that we have a bill against this same Reynard and Geoffrey's executors pending in this court.

Spigurnel J. What has become of the deed which testifies to the condition?

Malmerthorpe. It was in the custody of Geoffrey; and we have a bill pending against the executors, this Reynard and others, touching this deed and other ones.

Spigurnel J. It was foolish to let your staff slip from between your fingers.

Malm. Uncore serroms eide par lei de atteindre laverrement qe nous tendoms et de ceo demoroms en votz jugementz desicom nous avoms bille pendaunt[1] a demaunder cele escrit.

Spig. Par assent de Hervi et de Ormesby. Pur ceo qe vous avez conu vostre fet qe voet qe vous estes[2] tenuz simplement etc. et vous allegez une condicioun a destrure ceste dette dount vous navez rien si agarde cest court qe Johan et Reynald rescoverent lour demaunde de c. *li.* et homme enquerra des damages.

Ston. Il nous semble qil nest paas mester denquerre des damages kar vous avez le fet en court le quel il ount conu et en le quel est contenuz le jour de la paie [3]par la taxacioun des damages qe[4] chiet en vostre descrecioun.

Et a ceo accorderent les justices par quei Spig. agarda qil rescovere pur damages c.*s.*

[5]SCOT *v.* BERACRE.

[6]I.

Debitum. Hamo de Beracre[7] summonitus fuit ad respondendum Thome Scot de placito quod reddat ei xxx. *li.*[8] quas ei debet et injuste detinet et unde dicit quod cum idem Thomas et predictus Hamo in crastino animarum anno regni regis nunc vj° apud Cantuariam per quoddam scriptum indentatum[9] submisissent se in arbitracione Willelmi de Hegham Willelmi de Nadyngtone[10] Eudonis de Sligh[11] et Radulfi de Ensyng de omnibus contencionibus et demandis inter eos habitis. Et si quis eorum arbitracionem eorumdem arbitrorum ante Nativitatem domini proximo sequentem faciendam recusassent per idem scriptum obligavit[12] se et heredes suos alteri [parti] et heredibus suis per testimonium predictorum arbitrorum in predictis xxx. *li.* statim post arbitracionem predictam solvendis et quod altera pars recidisset quieta ab omnibus exactionibus[13] et demandis [14]inter ipsos Thomam Hamonem ante diem confectionis ejusdem scripti motis vel habitis ac iidem arbitrii racione submissionis predicte die mercurii proximo post festum omnium sanctorum anno supradicto in ecclesia Sancte Trinitatis apud Cantuariam super omnibus contencionibus et demandis inter ipsos habitis arbitrassent et eidem Thome pro accionibus et demandis[15] erga

[1] β *adds* ceinz. [2] estuz β. [3–4] car taxacion de damages β. [–5] Reported by $\alpha\alpha$, γ, $\gamma\gamma$, ϵ, θ and λ. γ and ϵ are not collatable with the others. [6] Text from γ collated with ϵ and E.R. [7] *from* ϵ; B. γ. [8] triginta libras ϵ. [9] *from* ϵ; γ *has* indentum. [10] Natindone E.R. [11] Shilghell ϵ; Shillingheld E.R. [12] obligasset E.R. [13] actionibus E.R. [14–15] Omitted through a copyist's carelessness and supplied from E.R. The omission makes the reference, a few lines further on, to *eadem ecclesia* unintelligible.

Malmerthorpe. Notwithstanding that, the law can help us by allowing us to make the averment which we are ready to make; and as to that we abide your judgment, seeing that we have a bill demanding this deed pending in this court.

SPIGURNEL J., with the assent of STAUNTON J. and ORMESBY J. Since you admit that you were a party to a bond whereby you bound yourself unconditionally etc., and now seek to upset that bond by alleging a condition of which you offer no proof, the judgment of the Court is that John and Reynard recover their demand of one hundred pounds; and there will be an enquiry as to damages.

Stonore. It seems to us that there is no need for any enquiry as to damages, for you have the deed in court, and they have admitted it; and that deed gives the date when the penalty became payable. The assessment of damages is a matter for the Court's discretion.

The JUSTICES agreed to this, and thereupon SPIGURNEL J. awarded that the plaintiffs should recover damages to the amount of a hundred shillings.

SCOTT *v.* BERACRE.

I.

Hamon of Beracre was summoned to answer the claim of Thomas Scott Debt.
that he should pay to him thirty pounds which he owes to him and unjustly detains from him; and concerning which the said Thomas says that he and the aforesaid Hamon in the city of Canterbury on the morrow of All Souls in the sixth year of the reign of the present King by a certain indented writing submitted themselves to the arbitration of William Higham, William Natindone, Eudo Sligh and Ralph Ensyng in respect of all disputes and claims that had arisen between them. And if either of them should refuse to give effect to the judgment of the said arbitrators to be by them delivered before the Feast of the Nativity of our Lord then next following by the same deed he bound himself and his heirs, upon the testimony of the aforesaid arbitrators, to the other and his heirs in the aforesaid sum of thirty pounds to be paid immediately after the aforesaid arbitration, and [it was further agreed] that such other party should be quit of all actions and demands commenced or made between the same Thomas and Hamon before the day of the making of the said deed. And the said arbitrators did in pursuance of the said agreement upon the Wednesday next following the Feast of All Saints in the year aforesaid in the Church of the Holy Trinity at Canterbury arbitrate concerning all disputes and demands between the said parties; and they awarded to the said Thomas in respect of all his rights of action and claims against

predictum Hamonem habitis xv.*li.* adjudicassent et die dominica proximo sequente et in eadem ecclesia eidem Hamoni arbitracionem illam pronunciassent ob quod idem Hamo sepius per ipsum Thomam requisitus quod xv.*li.* illas juxta ordinacionem predictorum arbitrorum ipsi Thome reddidisset. Idem Hamo easdem xv.*li.* eidem Thome reddere recusavit per quod actio ei accrevit predictas xxx. *li.* exigendi qui illas[1] hucusque reddere contradicit et adhuc contradicit unde dicit quod deterioratus est etc.[2] ad valorem[3] xx. *li.* et inde producit sectam etc. et profert quoddam Scriptum [4]sub nomine etc.[5] quod hoc testatur et Hamo venit et defendit vim etc. et bene cognoscit dictum scriptum esse factum suum sed dicit quod [6]idem etc.[7] non debet ei obesse[8] dicit enim quod predicti arbitri[9] predictis die et anno ipsi Hamoni non pronunciaverunt arbitracionem suam sicud predictus Thomas superius asserit et de hoc ponit se super patriam et T. similiter. Ideo fiat inde jurata et preceptum est vicecomiti quod venire faciat predictos arbitros[10] et postea concordaverunt.[11]

[12]II.

Dette.

Thomas Scot se pleint par bille qe Hamond de B.[13] et demanda une dette de xxx. *li.* et fist sa demostrance tiel qe come contek fust entre lauandit Hamond et T.[14] lacord se prist entre eux en tiele manere qil se mettreiont[15] en totes[16] choses en arbitracion de .iiij. a faire ordiner et arbitrer etc. et sil ne purreiont[17] assentir qil prendreit[18] a eux[19] W.[20] ou A. et arbitreront[21] et si nul de eux[19] dedit larbitrement qil serreit tenu a celui qi se assentist[22] en .xxx. *li.*[23] etc. dont les auantditz arbitrours[24] arbitreront[25] qe mesme cesti H.[26] durreit al avantdit T.[27] xv.*li.* pur totes maneres de trespas et conteks. H.[26] ceste arbitrement tenir[28] ne voleit ne fere[29] pur quoi accion accrust a nous[30] a demander les xxx.[31] *li.* et il lui a souent prie qil [32]lui rendra[32] etc. il rendre ne voleit einz [33]le dedit a tort etc.[33] et il mist avant fet qe ceo tesmoigne cele surmise del arbitrement.

[1] ϵ *and* E.R. *add* semper. [2] et dampnum habet ϵ, E.R. [3] Valenciam ϵ. [4–5] E.R. *omits.* [6–7] scriptum illud ϵ, E.R. [8] ϵ *and* E.R. *add* in hac parte. [9] arbitrii ϵ. [10] arbitrios ϵ; arbitratores E.R. [10–11] ϵ *omits*; etc. Postea predictus Thomas non est prosecutus. Ideo predictus Hamo inde sine die et predictus Thomas et plegii sui de prosecutione in misericordia, E.R. [12] Text of (II) from *aa* collated with γγ and λ. [13] Berak λ. [14] Thomas λ. [15] metterent γγ, λ. [16] toutz γγ, λ. [17] porreynt γγ. [18] prendirent γγ, λ. [19] euls γγ. [20] T. γγ; G. λ. [21] arbitrent γγ. [22] assentit, γγ. [23] γγ, λ *add* a payer. [24] arbitrers γγ, λ. [25] arbitrent γγ, λ. [26] Haumond γγ, λ. [27] Thomas λ. [28] tener γγ, λ. [29] fayre γγ, λ. [30] meme celi Thomas λ. [31] xx. λ. [32–32] rendesit γγ. [33–33] λ *omits.*

the said Hamon the sum of fifteen pounds; and on the Sunday next following and in the same church they delivered that same judgment to the said Hamon. By reason of the premises the said Hamon has been frequently asked by the said Thomas to pay to him the said Thomas the said fifteen pounds in accordance with the decision of the aforesaid arbitrators. The said Hamon refused to pay the said fifteen pounds to the said Thomas, by reason of which refusal the said Thomas is now entitled to demand by action the aforesaid sum of thirty pounds [from the said Hamon] who has hitherto refused and still refuses to pay them, by which refusal the said Thomas says that he is endamaged etc. in the sum of twenty pounds; and in proof of that he produces suit etc. and makes *profert* of a certain writing in the name of etc. which testifies of all this. And Hamon comes and denies force etc. and admits the deed to be his deed but says that the said deed ought not to be to his prejudice, for he says that the aforesaid arbitrators upon the day and year aforesaid did not deliver to him, the said Hamon, their judgment as the said Thomas asserts above; and as to this he puts himself on the country; and Thomas likewise. So a jury is to come, and the Sheriff is charged to have the aforesaid arbitrators present. And afterwards the parties agreed upon a settlement.

II.

Thomas Scott made plaint by bill against Hamon of B. and demanded a debt of thirty pounds and said in his declaration that disputes having arisen between the aforesaid Hamon and himself it was agreed between them in manner following, that is to say, that they should submit all matters in dispute between them to the arbitration of four persons who should settle and arbitrate etc., and if these should not be able to agree they were to add to themselves W. or A. and then give their decision; and if either of the parties refused to accept such decision of the arbitrators he should be bound to the other that accepted such decision in the sum of thirty pounds etc. And the aforesaid arbitrators adjudged[1] that the said H. should pay fifteen pounds to the said T. in settlement of all trespasses and disputes. H. would not abide by this decision nor give effect to it. Consequently we have become entitled to demand the thirty pounds, which we have frequently asked him to pay etc., but he will not pay them and wrongfully refuses to pay them etc. And he put in a deed which proved the submission to arbitration. Debt.

[1] The text has the future tense, γγ and λ the past, which is more in accord with sense; and in translating I have taken their reading.

Stonore defendit et dit vous veiez[1] bien coment il demande ceste dette par reson de une surmise[2] qe nous fesoms en un arbitrement de .iiij. etc. et il ne unt rien [3]de cel arbitrement[3] qe serreit cause de lur accion et demandoms jugement.

Malm. Nous auoms mis avant vostre fet par le quel vous vous[4] meistes en cel arbitrement ut supra et vous ne dedites point qe il arbitrerent[5] et demandoms jugement.

Heruy.[6] Vous nestes pas cy en court chrestiene de avoir en escrit qanqe[7] vous pledez.

Stonore. Il limit[8] la cause de lur accion sur .ij. choses sur la surmise[9] et sur larbitrement[10] rien ne unt ne fet des arbitrours ne [11]euidence de eus[11] qe tesmoigne[12] qil arbitrerent jugement etc.

Malm. Nous ne demandoms point ceo qe nous fust arbitre saver[13] les .xv. *li.* einz faceoms les xxx. *li.* en les queus vous [14]fustes oblige par ceo fet par tant qe vous ne assentistes[15] mie en larbitrement.

Pass. La dette qe vous demandez[16] est ausi com une poine[17] dont si ieo me oblige a vous en .xx. *li.* a paier a un certain iour et si ieo ne face[18] qe ieo vous seie[19] tenu en C.[20] *li.* ieo ne paie point al iour vous ne poez[21] demander les C.*li.* ausi par decea.

Frisq. Nous les demandoms par un fet demene qe ceo tesmoigne et noun pas come peine pour dette qar nous ne sumes[22] pas cy en cas des usurez.

Heruy[23] respondez.

Stonore. Uncores semble il qil ne deuient estre response qil[24] diont qil arbitrerent qil durreit xv.[25] *li.* pour totes maneres des[26] conteks et trespas dont tiel arbitrement deit estre [27]une acquitance[28] et [29]il ne mostre[29] point le arbitrement jugement.

Spigurnel. Le fet[30] en [31]lui mesme[31] est en lu[32] de acquitance de ceoqe [33]vous vous surmeistes.[34]

Stonore. Uncores ne deiuent il estre response[35] qe le fet[30] en lui mesme qe vous mettez[36] a la court ne tesmoigne fors[37] qe nous [38]nous surmeymes[38] en larbitrement et [39]celui qi se desasentereit[40] serreit tenu etc. apres larbitrement tesmoigne par les arbitrours.

[1] veetz γγ, λ. [2] submissioun λ. [3–3] γγ, λ *omit.* [4] γγ *omits.* [5] arbitrent γγ, λ. [6] Stant λ. [7] tant cum γγ ; qant qe λ. [8] lymit γγ ; lieat λ. [9] submissioun λ. [10] γγ, λ *add* de le arbitrement. [11–11] evidences deuls γγ ; rien de eux deus λ. [12] testmoygnent γγ, λ. [13] γγ *omits.* [14] λ *adds* me. [15] assentisetz γγ, λ. [16] demandetz γγ, λ. [17] peyne γγ, λ. [18] paie λ. [19] soy *aa*, λ. [20] xx. λ. [21] poetz *aa*, γγ. [22] Sumus γγ. [23] Stanton λ. [24] qar il γγ. [25] xvi. γγ. [26] de γγ, λ. [27] γγ *adds* cum. [28] λ *adds* de ceo vous nous surmettez. [29–29] ne dient λ. [30] fait γγ, λ. [31–31] ly memes γγ, λ. [32] lieu γγ, λ. [33–34] nous vous surmettoms (*sic*) λ. [34] surmeistis γγ. [35] respondu γγ, λ. [36] λ *adds* avant. [37] pas λ. [38–38] vous vous surmettes λ. [39] mesqe λ. [40] desasenti γγ, λ.

Stonore defends and says: You are told that he claims this debt by reason of a submission to the arbitration of four to which we were party; but of this arbitration on which he bases his right of action he offers no proof whatever; and we ask for judgment.

Malmerthorpe. We have put in your deed, and by that deed you submitted yourself to that arbitration as above, and you do not deny that the arbitrators came to a decision, and we ask for judgment.

STAUNTON J. You are not in Court Christian here where everything you plead must needs be in writing.

Stonore. He limits his right of action to two matters, the submission to arbitration, and the decision of the arbitrators; and as to the decision they offer no evidence at all, neither any deed of the arbitrators, nor any testimony by them that they ever arbitrated. Judgment etc.

Malmerthorpe. We are not claiming the money which the arbitrators awarded to us, that is to say, fifteen pounds, but we claim the thirty pounds in which you were bound by your deed in case you did not give effect to the decision of the arbitrators.

Passeley. The debt which you are claiming is of the nature of a penalty. If I acknowledge that I am indebted to you in the sum of twenty pounds, payable upon a certain day, and that if I do not pay it on that day I am bound to you in the sum of one hundred pounds, and I fail to pay you on the appointed day, you cannot demand the hundred pounds from me [as well as the twenty pounds]; and so here.

Friskeney. We demand them on the strength of a deed of your own which entitles us to demand them, and not as a penalty for the non-payment of a debt, for we are not here in a matter of usury.

STAUNTON J. Answer.

Stonore. For yet another reason it seems to us that he ought not to be answered, for he says that the arbitrators adjudged that Hamon should pay him fifteen pounds, the payment of which sum, awarded by the arbitrators in respect of all disputes and trespasses, was to act as a full acquittance; and he has nothing to show you as to the award of the arbitrators. Judgment.

SPIGURNEL J. The deed itself is evidence that performance of the arbitrators' decision should act as an acquittance in respect of the matters you submitted to them.

Stonore. Yet again they ought not to be answered, since the deed which you have produced to the Court testifies in itself nothing more than that we agreed to submit our differences to arbitration, and that if either of us refused to abide by the decision of the arbitrators, as

Et [1]les arbitrours unqes cele tesmoignance ne mustrerent ne pup-lierent[2] pur quoi[3] nous ne pouuoms a lur arbitrement desasentir et le fet fust lu qe ceo voleit.

Frisq. Donqe conussent[4] il[5] qil y auoit arbitrement.

Spigurnel. Ceo ne conussent il point car il diont qe nul arbitre-ment fust tesmoigne ne pronuncie par les arbitrours dont si il arbitrerent et pronuncierent point coment poit il desasentir.

Wescote. Ausi priue put lur arbitrement estre com lordinance de vos jugements entre vous dont tut ussez vous ordeine vostre jugement entre[6] tiel com il serra encore nest ceo pas jugement einz ceo qe il seit pronuncie ausi par de cea.

Malm. Il arbitrerent et vous ne voleistes oier lur arbitrement mes [7]alastes en defuant prest etc.

Heruy.[8] Le fet ne[9] voet nul certain iour de arbitrer ne de pronuncier [10]et pur ceo mettez le en certein[11] per response.[12]

Malm. Il arbitrerent a tiel iour a Cantebirs [13]en la Eglise de C.[13] et larbitrement pronuncie tiel iour en la presence mesme cesti H. prest etc.

Stonore. Nul arbitrement pronuncie prest etc. par les arbitrours etc.

[14]Et alii e contra.[14]

[15]III.

Thomas Scotts port sa pleint par Bill vers Hamon de Geratre[16] e dit qe a tort li detient etc. xxx Marcs e dit qe certain jor e an en Caterburie [*sic*] il se mistra de tuz conteng en Arbitrement de iiij e se obliga qe celi qe refusa Larbitrement serroit tenuz a celi qe se assent droit en xxx. Marcs e dit qe les iiij arbitrerent qe Hamond averoit xv.*li.* il le Arbitrement refusa par quoi accion aqust [*sic*] etc. e mist auant fait de la submission.

[1–3] la vous dioms qe λ. [2] pulpliserent γγ. [4] conisserent γγ; conusez λ. [5] λ *omits.* [6] γγ *adds* vous. [7] eynz γγ. [8] Sant (*sic*) λ. [9] γγ *omits.* [10–11] etc. doune sil voleient pronuncier lour arbitrement a Eurewik irreient il la. cest grant defaute de larbitrement λ. [11–12] et respondez λ. [13–13] λ *omits.* [14–14] from λ. [15] Text of (III) from *θ*. The text of this report is obviously corrupt. The writer of it seems to have copied it from some earlier Year Book which he could not clearly read. In *Stonore's* first speech the first *tem* and *citi* are probably misreadings. [16] *sic.*

testified by the arbitrators, he should be bound etc. But the arbitrators have never testified any decision, nor produced nor published one ; and we cannot, therefore, have refused to abide by their decision.

And the deed which set this out was read.

Friskeney. Does he admit that there was an arbitration ?

Spigurnel J. He does not admit that, for he says that no decision was testified nor given by the arbitrators, and asks how it was possible for him to refuse to abide by a decision of arbitrators who did not arbitrate nor give a decision.

Westcote. The arbitrators may have settled privately what their decision should be, just as you may discuss amongst yourselves what judgment you will give ; but though you may have settled every detail of the judgment you are going to deliver, yet it has no force as a judgment until it has been actually delivered. And so here.

Malmerthorpe. They arbitrated, and you would not listen to their decision, but went away and defaulted. Ready etc.

Staunton J. The deed does not show that any certain day was appointed for the arbitration or for the publication of the arbitrators' decision ; and so in your replication you had better give these dates exactly.

Malmerthorpe. They arbitrated upon such a day at Canterbury in the church of C., and they gave their decision upon such a day in the presence of this same Hamon. Ready etc.

Stonore. No decision was ever given by the arbitrators etc. Ready etc.

And thereon was issue joined.

III.

Thomas Scott brings plaint by bill against Hamon of Beracre and says that Hamon wrongfully detains from him thirty marks. He says that they bound themselves on a certain day and year in Canterbury to submit all matters in dispute between them to the judgment of four arbitrators, and that it was agreed between them that if either of them should refuse to abide by the decision of the arbitrators he should be bound in thirty marks to the one that should abide by it. He says further that the four arbitrators adjudged that Hamon should pay[1] fifteen pounds. Hamon refused to carry out the judgment of the arbitrators, whereby action accrued etc. And Thomas made *profert* of the agreement to arbitrate.

[1] The text clearly says that Hamond should 'have' fifteen pounds, but this is obviously a mistake.

Stonr. il nont rien qe tem qe les iiiij [*sic*] Arbitrerent ne les Arbitrours ne sont pas en citi a tem de Arbitrement jugement etc.

Stant. vous nestes pas en Corte Christiene ou sentence serra done en escrit eins estes a la Lez de terre en en les [*sic*] suffit dauerer Larbitrerent.

Pass. cest Accionn de dett e founde sur un pegne et soune de usurer de qi ley ne suffer pas auer recoverier auxi come en ces jeo me oblige de estre tenuz a vous en x*li.* a paier a certaine jor et si ieo ne les paya a certaine jor qe ieo li soi tenus en xl*li.* Ley ne soeffre pas mais qe les x*li.* ne soient paidz an ior qe les xl*li.* soient recouerez par accionn usure.

Staunton. nul peyne ne usure forsq la ou la peyne est de mesme le [*sic*] nature qe est la chose a qi home est principalment oblige mais en le cas ou nous sumus ore ceo nest fors une peyne de dette sur un Covenaunte ut patet supra.

Stonor. Larbitrement ne fust unques pronunce a nous par les Arbitretors issi qe nous poemms de saver[1] prist delauerer.

Frisk. quoi respondez vous al Arbitrament qest cause de cest accionn.

[*Stonore.*] [2]Nous ne poemus del Arbitrement conusance aver si non par la puuplicasionn [*sic*] et ceo ne firent il pas prist etc.[3]

Stanton. Lesqrit de la submission est defective au tant com il ne fait pas Mencioun du Roie [*sic*] ou il deueroyent arbitrer et pronuncier par qi dit nous ou il arbitrerent et pronunciarent.

Friske. il arbitrarent et pronunciarent en presence mesme celi Hamond de Canterburie en celi Esglise prist etc.

Et alii econtra etc.

[4]NOTA.

Penaltye. Nota si ieo sei tenu a un homme en xx.[5] *li.* et ieo [6]me oblige qe si ieo ne[6] paie les xx.[7] *li.* a un certein iour qe ieo ly sey tenu en xl.[8] *li.* tut ly enfreint ieo iour qe fut assis des xx. *li.* il nauera iammes accion a demander les xl.[8] *li.* racione quia usura [9]alia racione[9] quia habet accionem disracionandi principale qest les xx.[7] *li.* pur quei il ne put desreigner la peine [10]&c. per *Pass.* in itinere[10] &c.

[1] The reading of this word is doubtful. [2–3] The scribe makes this part of *Friskeney's* speech. [4] Note from δ and ϵ. Text from δ collated with ϵ. [5] diz ϵ. [6–6] moi ne ly ϵ. [7] x. ϵ. [8] xx. ϵ. [9–9] et ϵ. [10–10] from ϵ

Stonore. They have nothing to show when the four arbitrated nor that the arbitrators were in the city at the time of the arbitration. Judgment.

STAUNTON J. You are not in Court Christian where the pleadings must be in writing, but you are under the common law, by which an averment of the arbitration is sufficient.

Passeley. This action of debt is based upon a penalty and savours of usury, of which the law will not permit you to have recovery. For example, if I say that I hold myself bound to you to pay you ten pounds upon such a day, and that if I do not pay them to you upon that day I am then bound to you in forty pounds; and if I fail to pay the ten pounds upon the appointed day the law will not allow you to recover, by way of usury, the forty pounds.

STAUNTON J. Penalty and usury are only irrecoverable where they grow out of the sum in which the obligee is primarily bound; but what is claimed here is claimed as a debt arising out of covenant—as appears from what has gone before.

Stonore. The arbitrators never made any decision of theirs known to us so that we had knowledge of it. Ready to aver it.

Friskeney. What answer do you make to the Arbitrators' judgment upon which this action is based?

[*Stonore.*] We could have no knowledge of that decision except by the communication of it to us by the arbitrators, and that communication they never made. Ready etc.

STAUNTON J. The writing setting out the submission to arbitration is defective in as much as it does not mention the street where the arbitrators were to arbitrate and to give their judgment; so tell us now where they did arbitrate and give judgment.

Friskeney. They arbitrated and gave judgment in the presence of Hamon himself in the church. Ready etc.

And thereupon was issue joined.

NOTE.

Penalty.

Note that if I be bound to one in the sum of £20 upon the conditions that if I do not pay the £20 by a certain day I shall then be bound in £40, and if I do not pay the £20 by the day assigned, yet shall not the other ever be entitled to demand the £40; for it would be usury; and also because he can sue to distrain for the principal, that is to say for the £20, and consequently cannot distrain for the penalty etc. By *Passeley* during the Eyre etc.

[1]ANON. *v.* ANON.

Un homme se conu estre tenu a un autre en une certeine somme argent par statut marchant en la cite de Loundres devant le mayre e le bailiffs. Apres le jour encorou celi a qy le conisance se fit nient aumerre e pria execucion. Le conisour fut en la cite par qay cely a qy la dette fu conu sua un certificacion e avoyt bref de athacher. Le conisour fut athache. Fut la parole remue en Baunke le Roy. Celi a qy la dette fu conu [vint] e mist avant le fet encele du ceal le meyre e le clerke lautre dit qe coment qe il avoyt un tiel fet a cele qe unkes ne fut conu a ly en nul dette e ceo tendi de averer. Par qay fut demande pour le roules le vicount e le rowles le meire. Ensement le vicount fu mort. Leyr le vicount manda les rowlus e dit qe il navoyt plus de tiel an. E le meyr auxi. En qele rowles rien fu trove. Par qay le conisour demanda jugement de puis qe rien fut trove en le rowles coment il dut departier. E desicum le vicount avoyt retourne qe il navoyt autre roules qe ces qe il avoy demandez.

Scrope Justice. Retourne de vicount ne porte mye recorde en tiel cas etc.

[2]NOTA.

Nota qe une obligacion fut fet al baron et a sa feme de .x.*li.* le baron morust la feme demanda lenter de la dette soul sanz nomer les executours le baron et nepurqant la femme recouera la dette par jugement pur ceo qe la dette ne fut pas recouere en la vie le baron et dettes qe surdent de obligacion fet a .ij. celi qe survist serra respounable de lentier par jugement etc.

[3]GERUYN *v.* BARTOUN.

Dette par reson de terme.

Lucas Geruyn porta sa bille de dette vers Johan de Bartoun et demanda .x.*li.* par la reson qil meme lessa al auantdit Lucas (*sic*) certeine terres a terme de anz renddant par an xl.*s.* dont lez x.*li.* de v. ans sont areres atort etc.

Caunt. Qei auez de la dette.

Ingham mist auant un escrit qe voleit qe Lucas et Johane sa feme lesserent les tenemenz renddant .xl.*s.* par an ut supra.

[1] Reported by β only. [2] Reported by η only. [3] Reported by η only.

ANON. *v.* ANON.

A man acknowledged that he was bound to another in a certain sum of money by Statute Merchant in the city of London before the Mayor and bailiffs. The date of payment having passed, and he to whom the acknowledgment was made having received naught, he prayed execution. The conusor being in the city the conusee of the debt sued out a *certiorari* and got a writ of attachment. The conusor was attached. The hearing was removed into the King's Bench. The conusee of the debt appeared and produced the deed sealed with the seal of the Mayor and the clerk. The other said that notwithstanding that the conusee had produced such a deed, yet had he himself never acknowledged that he was indebted to him in any way ; and that he offered to aver. The Court called for the Sheriff's rolls and the Mayor's rolls. The Sheriff being dead, his heir sent the rolls, and said that he had no more of that year. And the Mayor said the same. Nothing was found in these rolls. Thereupon the conusor asked judgment whether, seeing that naught was to be found in the rolls, and that the Sheriff had returned that he had none other rolls then those he had sent, he ought not to go quit.

Scrope J. Return by a Sheriff is not of record in such a case as this etc.

NOTE.

Note that a bond for £10 was given to a husband and his wife. The husband died, and the wife demanded the whole debt, without naming the executors of the husband ; yet notwithstanding this, the wife recovered the debt by judgment, upon the ground that the debt was not recovered within the husband's lifetime, and that in the case of debts arising from a bond given to two persons, the survivor of the two is entitled to recover the whole debt by judgment.

GERVYN *v.* BARTON.

Arrears of rent.

Luke Gervyn brought his bill for debt against John of Barton, and demanded £10 ; saying that he had leased certain land to the aforenamed John for a term of years at the yearly rental of forty shillings, and that the sum of £10, being five years' rent, was wrongfully in arrear etc.

Cambridge. What evidence have you of the debt ?

Ingham produced a lease showing that Luke and Joan, his wife had leased the land at a rental of forty shillings, as above.

Caunt. Vous demandet soul cete dette et mettet auant fet qe testifie qe vous et Johane vostre feme lesserent lez tenemenz etc. renddant a vous .ij. xl.*s.* et Johane nient nome en la pleinte jugement etc.

Ingham. Si ieo le feise nomer ieo supposerey qe ele put vivant moy proprete de chatel recouerer estre ceo coment qe la feme est nome en le fet tot est le fet le baron durant la couerture pur qei etc.

Caunt. Nest pas issi le fet le baron qar si la feme suruiue son baron ne purra la feme demander si ele voile et agreer le lees fet durant la couerture.

Et pur ceo qe ele poit demander la ferme auantdite si ele survesqit et la feme ne est pas nome la bille se abati par jugement Secus est si le baron vst lesse terre en fee ou a terme de vie de son droit demene renddant une ferme par an ou une rente a ly et a sa feme etc. pur ceo qe le baron ne purra rien doner ne estat fere a sa feme durant la couerture de terre etc. forpris dowere etc.

[1]ANON. *v.* ANON.

Dette vers leir.

Une bille de dette fut porte vers un homme et fut la dette demande par un obligacion qe fut le fet lancestre la femme ou il auoit oblige ly et ses heirs etc.

Stonore. Il nous bie lier a ceste dette par ceste obligacion Sire nous vous dioms qe la femme par le feit de qi auncestre il bient ceste dette recouerir est deinz age et demandoms jugement si durant nostre nounage al fait nostre auncestre deuoms respondre.

Et fut dit qele fut de plein age selom les usages de Gauilkind ou ele poeit sa terre aliener et fere estat si ele fut vouche par le fait son auncestre ele ne respoundra my tanqe ele fut de xxj. an pur quei ele respondit my a la partie conge etc. et il auoit etc.

[2]EXECUTORES ISABELLE BEREHAM *v.* TWYTHAM.

Dette.

P. de H.[3] et R. Vikere de [4]la Eglise de B.,[4] executours du testament [5]Isabel de B.[6] porterent [7]une bille[7] de dette vers un [8]A. de T.[8] et counterent

[1] Reported by δ only. [2] Reported by δ, ζ and λ. Text from δ collated with ζ and λ. Names of the parties from E.R. The names of Isabella's executors as given in the Roll are 'Radulphus vicarius ecclesie de Papesham et Philippus de Ormesby.' [3] Honesbi λ. [4–4] G. λ. [5–6] Jon de Berham λ. [6] Berham ζ. [7–7] un bref ζ; lour bref λ. [8–8] Alan de Twyham ζ; Alein de Tyam λ.

Cambridge. You alone are claiming this debt, but you put in a deed which shows that you and Joan your wife leased the tenements etc. at a rental of forty shillings payable to you both; and Joan is not named in the bill. Judgment etc.

Ingham. To name her would be equivalent to saying that she could, during my lifetime, recover personal property. Further than that, even though the wife be named in the deed, the deed still is entirely the husband's deed during coverture. Wherefore etc.

Cambridge. It is not so entirely the deed of the husband; for if the wife survive her husband, will she not be entitled to claim the rent, if she choose, and to acquiesce in the lease granted during the coverture?

And because a wife is able to claim the aforesaid rent, if she survive her husband, and was not named, the bill was abated by judgment. It would have been otherwise if the husband had leased in fee or for life land of his own right at a fixed yearly rent, or at a rent to himself and his wife etc., for the husband cannot, during coverture, give aught to his wife or grant her an estate in land etc., with the exception of dower etc.

ANON. *v.* ANON.

Debt brought against an heir.

A bill of debt was brought against a man, and the claim accrued from a bond which was given by the ancestor of his wife, in which he had bound himself and his heirs etc.

Stonore. He wants to make us liable for this debt by this bond. Sir, we tell you that the wife, by whose ancestor's deed they want to make us liable for this debt, is under age; and we ask judgment whether, while we are under age, we ought to answer to our ancestor's deed.

And it was said that she was of full age according to the custom of Gavelkind, by which she could alienate her land and warrant title. If she were vouched under her ancestor's deed she will not be answerable till she attain the age of twenty-one years. Wherefore she did not answer the party. And counsel asked leave etc. and had it.

BEREHAM (EXECUTORS OF) *v.* TWYTHAM.

Debt.

P. of H. and R., vicar of the Church of B., executors of the will of Isabel of B., brought a bill of debt against one A. of T., and counted

qe a tort lour detient ij.c. *li.*[1] a paier a certein iour etc. a quel iour rienz ne paya etc. et il mistrent un lettre obligatoire auant [2]qe fut le fait mesme cesti [3]A. de[3] mesme la dette[4] et testament qe tesmoigne qil furent executours.

Stonore [5]defendit et dit qe A. ne pout[5] dedire qe ceo nest son fait mes il dit qe pus ceo fait il a couynt certein iour[6] et lieu entre mesme cesti A. et lauantdit Isabel[7] issint qe A. deinz un certein iour prendreit a femme une[8] fille mesme ceste Isabel[9] et qe deinz le moyz prochein ensuaunt freit a mesme ceste Isabel[10] estat a terme de vie de certeinz tenemenz en W.[11] qe furent del droit Johane[12] et qil freit acquitance a Isabel[10] del accion du cel temps qe Johan[13] fut en la[14] nurture. [15]Et si lauantdit A. perempleiste les couenantz auantdit [16]et prist sa fille a femme et de la terre auantdit en le moys enffeffast qant il serra enquis issint qe en lui ne remansit point qele ne fut enfeffe deinz le moys etc. et ly feist les acquitances auantdit[17] qe a donqe lobligacion de ij.c. *li.* fut[18] nule et qe en le fet en le quele ceste couenant fut tenu[19] ly fut en lieu dacquitance de les .ij.c. *li.*, et de ceo mist auant une euidence qe tut ceo tesmoigna. Et vous dioms qe sur ceo couenant A. esposa J.[13] et prest fut deinz le moys auer enfeffe J. [20]des tenemenz en W.[21] a terme de sa vie mes sudaine maladie la prist issint qil[22] morust deinz le terme pur quel [23]il ne put en nous defaut assigner[23] et en droit des acquitances [24]de couenant[25] prest fuimes[26] dauer fet[27] les acquitances[28] est ceo ci voloms auerer jugement [29]si vers nous rienz puissent demander.

Et fut le fait veu[30] de curte.[31]

Malm. Sire[32] le fait voet [33]qil nous enfeffe[33] deinz le moys [34]et il nous enfeffa[34] point.[35]

Condicions. *Toudebi.* [36]Ieo auoi certein temps deinz lequel ieo ad enfeffe pur quei tut le temps fut le meen de vous enfeffer[36] donqe si vous deuiez[37] la defaute nest my en moy[38] qar si ieo ay apprunte de vous certein

[1] ζ, λ, *add* Et pur ceo a tort qe meme celi A. se obliga estre tenu a Isabel [λ *has* lauandit Jon] en C.C. li. [2–4] etc. λ. [3–3] Alain qe tesmoina ζ. [5–5] nous ne poems ζ. [6] ζ *adds* an et. [7] Jon λ. [8] ζ, λ *add* Jone la. [9] Jon λ. [10] Jon λ. [11] Wayham ζ; Wentham λ. [12] Jone λ. [13] Jone λ. [14] sa λ. [15–17] ζ *omits.* [16–17] λ *omits.* [18] ζ *adds* tenu pur. [19] contenu ζ, λ. [20–22] solom le covenant, mes sodeinement Jon λ. [21] Wayham ζ. [22] qel ζ. [23–23] en nous ne remeint pas la defaute λ. [24–25] λ *omits.* [25] acounte λ. [26] sumes ζ. [26–27] de fer ζ. [28] ζ, λ *add* et uncore sumes. [29–31] λ *omits.* [30] leu ζ. [32] La ou ζ. [33–33] qe vous la enfefferez ζ. [34–34] vous la feffates ζ. [35] ζ, λ *add* jugement. [36–36] Nous avoms certeins tens denz qel nous la enfefferons ζ. [37] ζ *adds* denz la terme; λ *adds* deinz ceo tens. [38] nous ζ.

that he wrongfully detained from them £200, which he was bound to pay them on a certain day etc., upon which day he had paid them naught etc., and they produced a bond executed by this same A. binding himself in this same sum and also the will which proved their appointment as executors.

Stonore defends and says: A. cannot deny that this is his deed, but he says that, since the deed was executed, upon a certain day and in a certain place it was agreed between himself and the aforesaid Isabel that he, A., before a certain day should take to wife [Joan] a daughter of this same Isabel, and that within a month thereafter should grant to this same Isabel a life estate in certain lands in W. which were of Joan's right, and that he would give an acquittance to Isabel for whatever right of action should accrue to him in respect of the time that she had the nurture of Joan. And if the aforesaid A. carried out his agreement as aforesaid and took to wife Isabel's daughter and enfeoffed Isabella of the land aforesaid within the month when he should be requested so to do, so that through no fault of his it should happen that she should not be enfeoffed within the month, and granted her the acquittance aforesaid, then the bond for £200 should be void; and the deed in which these covenants were contained was to be in the stead of an acquittance of the £200—and he tendered evidence in proof of his statement. Now we tell you that in accordance with this agreement A. married J., and was ready to enfeoff J. of the said lands in W. for the term of her life within the month, but a sudden sickness seized her so that she died within the term; and so they cannot charge us with any default. And as to the acquittance covenanted in the deed to be made, we were always ready to make it; and all this we will aver. Judgment whether they can claim anything against us.

And the deed was inspected by the Court.

Malmerthorpe. Sir, the deed says that he is to enfeoff us within the month, and he did not enfeoff us.

Toudeby. I had a certain time allowed to me to enfeoff you, therefore I was within my right if I enfeoffed you at any time within the period allowed to me; consequently, if you die before that period has expired, you cannot impute any default to me. For suppose I have

Conditions.

[1]argent tanqe a un iour[2] fut le [3]temps est [4]meen du[5] paiement[6] tanqe al fine [7]de cel iour[7] ieo nay rien trespasse auxi de ceste partie pus qe tut le temps du moys fut le soen a tenir le couenant issint qe au drein iour [8]du moys poeit[8] auer peremple jugement si en ly puissez defaute assigner.[9]

Malm. Lescrit voet qil enfeffe Isabel[10] deinz le terme [11]qant il serra[11] requis [12]et il fut deinz le terme requis de Isabel qil laffeffera[12] et il refusa [13]de feffer[13] prest etc. et issint sa defaute jugement.

West. Tut [14]ust ele[14] requis xx foitz de lui auer enfeffe et il ust [15]tous iours[15] refusee et a la fine du terme ly[16] ust enfeffe [17]il ne ust rienz trespasse[17] et depus qe nous voloms auerer [18]qele morust[18] deinz [19]la terme [20]nous poames lenfeffement[21] auer[22] perempli jugement [23]si en nous defaute puissez assigner.[23]

Malm. Ut prius.

STANTONE. Il couent moustrer[24] qe en ly remist qele ne vst estee feffe deinz le terme.

Et pus dit il al autre partie il couent qe vous diez com bien deinz le terme ele morust et com bien ele fut denz tenemenz dount ele dust auer estee feffe.

Stonore. Ele morust a B. iiij lieuz des [25]queux ele[25] dust auer estee feffe et viij.[26] iours deuant le fine du moys prest etc. issint qe nous purrions couenablement deuant le terme auer peremple les couenantz auantdit.[27]

Note from the Eyre Roll.

The count was :—Quod cum predictus Alanus die Veneris in crastino Sancte Marie Magdalene anno domini Regis nunc quinto apud Saxingherst per Scriptum suum obligasset se teneri predicte Isabelle cujus executores ipsi (*sc.* the plaintiffs) sunt in predictis ducentis libris quas ab eadem mutuo recepit solvendo eidem Isabelle vel suo certo attornato etc. ad festum Sancti Michaelis proximo sequens etc. predictus Alanus predicte Isabelle in vita sua predictum debitum non reddidit et eisdem executoribus illud detinet et

[1–2] vj. *li.* a paier le utime iour ensuant λ. [2] viij. jours ζ. [3–5] le men tens est le mens λ. [4–6] Meme de la paie ζ. [5–9] si ieo vous paie al utime iour ieo ne vous facz nul tort et ensi put il auer perempli ceo couenant en la fin de meuntz par qei en li ne put nul defaute estre assigne λ. [7–7] des viii jours issint si jeo paie le xx jours ζ. [8–8] tut ζ. [10] Jon λ. [11–11] λ *omits.* [12–12] λ *omits.* [13–13] λ *omits.* [14–14] fut il *a.* [15–15] ζ *omits.* [16] vous la ζ. [17–17] vous ne purrez aver assigne nulle trespass en li ζ; vous ne purriez assignez nul trespass λ. [18–18] ζ *omits.* [19–21] quel terme il poeit le covenant ζ. [20–22] deinz queu terme il put ceo covenant a li λ. [23–23] λ *omits.* [24] assigner ζ. [25] tenementz qel ζ; tenemenz λ. [26] vi. λ. [27] The reports break off at this stage of the case.

borrowed a certain sum of money of you repayable by a certain day. Though it is open to me to repay the money at any time before the last day assigned for payment [yet if I do not so repay before such last day] I have committed no breach. And so here. He had a full month in which to perform his agreement, so that on the very last day of the month it was still open to him to perform it. Judgment whether you can allege breach of covenant against him.

Malmerthorpe. The agreement says that he shall enfeoff Isabella at any time within the term when he shall be requested so to do. Isabella did request him within the term to enfeoff her, and he refused to enfeoff her. Ready etc. and so he is in default. Judgment.

Westmorland. Though a score times she had asked him to enfeoff her and every time he had refused, yet if he had enfeoffed her on the last day of the term he would have committed no breach. And since we are ready to aver that Isabella died within the term, it was still open to us [if she had lived] to have enfeoffed her as we agreed. Judgment whether you can assign breach against us.

Malmerthorpe as before.

Staunton J. You must show that it was through his default that she was not enfeoffed within the term.

And then, addressing the other side, he said: You must say how long before the end of the term Isabella died, and how far from the tenements of which she should have been enfeoffed.

Stonore. She died at B., four leagues away from the tenements of which she should have been enfeoffed, and eight days before the end of the month. Ready etc.; so that the covenants aforesaid might easily have been performed within the term.

Note from the Eyre Roll—*continued.*

reddere contradicit etc. Unde dicunt quod deteriorati sunt et dampnum habent ad valenciam Centum librarum et inde producunt sectam etc.

The plea was:—Quod predicti executores nichil exigere possunt de predicto debito etc.

The executors were subsequently nonsuited, and were, together with their pledges, put into mercy.[1]

[1] *m.* 33*d.*

[1]RANDOLF *v.* LABBE DE HAYLES.

Dette.

Johan Randolf porta bref de dette vers labbe de Hayles et demanda C. *li.* et counta en ceste manere : Ceo vous mostre Johan Randolf etc. qe labbe de Hailes a tort lui detient etc. et pur ceo a tort qe mesme cesti Abbe achata par un T. de E. son moigne xj. saks de Layne pris etc. de mesme cesti Johan a paier etc. les queus leines deuindrent a la mason mesme cesti Abbe et al profist de la maison a quel jour etc. il ne lui paia point einz le dedit et uncore fet a tort etc. et sil le voet dedire prest del auerer qe les leines devyndrent en la seisine mesme cesti Abbe et al profist de la maison et ausint mist auant fet qe tesmoigne le contrat.

Stonore defenda et dist Sire vous auez bien entendu coment il demande ceste dette et ad counte de un contrat fet en un Counte et le bref vint al vicounte dun autre countie pur quoi nous demandoms jugement du bref.

Wescote. Sire bref put estre porte en quel counte qe le dettour eit assez de quoi par quoi estre Justize ou qe le contrat seit fet.

Stonore. Sire il ont dit qe les leines deuindrent en nostre seisine et al profist de nostre maison qest en mesme le Counte qil ont counte le contrat estre fet donc les gentz de mesme le Countie pount nientz auer conissance qe gentz de autre Countie donc nous demandoms jugement com auant.

Heruy. Par launciene ley homme soleit abatre bref en ceo cas mais nous auoms vsee le contrarie grant temps et pur ceo dites outre.

Stonore. Quoi auez de la dette.

Wescote. Suite bone et prest del auerer qe les leines devindrent en vostre seisine et tourneront al profist de vostre maisoun et veez cy le fet le moigne qe ceo tesmoigne.

Stonore. Sire vous [*sic*] bien coment il demande ceste dette et ad counte qe les leynes devindrent en profist de la maison ceo ne lur donne mie accion car il purreiont auoir deuenuz al profist de nostre maison en

[1] Reported by *aa* only, but printed in the old edition of the YBB. of Edward II, p. 105. (Pasch. Anno 4.)

RANDOLPH *v.* THE ABBOT OF HAILES.

John Randolph brought a writ of debt against the Abbot of Hailes[1] and demanded one hundred pounds, and counted after this wise:— This showeth you that John Randolph etc.; which the Abbot of Hailes wrongfully detains from him etc.; and wrongfully for the reason that the said Abbot having by one T. of E., his monk, bought eleven sacks of wool of the aforesaid John at the price etc. to be paid etc., and the said wool having been delivered at the house of the said Abbot for the use of the said house, the said Abbot did not upon the day appointed etc. pay the said John, but wrongfully refused and still refuses to pay him; and if the Abbot will deny the premises, John is ready to aver that the wool was delivered into the possession of the said Abbot for the use of his house. And he made *profert* of a writing which shows the agreement. Debt.

Stonore defended and said: Sir, you have seen plainly in what circumstances John claims this debt, counting of an agreement made in one county, while the writ is addressed to the Sheriff of another county; and, by reason of this, we ask judgment of the writ.

Westcote. Sir, a writ may be brought in any county wherein the debtor have sufficient out of which he may be justiced, or in the county where the agreement was made.

Stonore. Sir, you have been told that the wool was delivered into our possession for the use of our house which is in the same county wherein they have counted that the agreement was made; but the people of this county cannot make recognition touching the acts of people of another county; and so, as before, we ask judgment.

Staunton J. By the old law the writ in this case might have been abated; but the contrary has been the practice for a long time past; and so plead over.

Stonore. What have you in proof of the debt?

Westcote. Good suit, and we are ready to aver that the wool was delivered into your possession and was used for the profit of your house; and see here the writing of the monk in testimony thereof.

Stonore. Sir, you see plainly after what fashion he claims this debt and how he has counted that the wool was delivered to the profit of the house; but all this gives him no right of action, for the wool might have been delivered for the profit of our house otherwise than

[1] In Gloucestershire. A Cistercian Abbey founded by Richard, Earl of Cornwall (afterwards King of the Romans) in 1246.

autre manere qe par achat et il nad mie dit qe nous fuimes partie al contrat einz fust un autre moigne pur quoi etc.

Herl. Verite est qe les leynes devindrent en vostre seisine et tomeront al profist de vostre maison et assez nous suffit de vous lier a la a la (*sic*) dette et demandoms jugement.

Malm. Sire il unt counte de un contrat fet ofue un T. nostre moigne et ne unt pas dit qe nous sumes partie al contrat et demandoms jugement.

Berr. ieo maundrai moun homme al marche il achatera a moun oeps diuers marchandises et il les fra venir a moun hostiel et ieo les despendrai ne quidez vous qe ieo responde *quod diceret sic.*

Frisk. Sire vous veiez bien coment il demande ceste dette et nad rien qe tesmoigne sa demande forsqe suite pur quoi labbe vous dit qe rien ne lui deit prest etc. en contre lui et en contre sa suite.

Herle. A ceo nauendrez mie car nous auoms dit qe les leynes devyndrent en profist de la maison et ceo chiet en conissance de pais et nous auoms mis auant le fet le moigne qe tesmoigne la dette jugement si a la lei deuez auenir.

Et sic ad judicium etc.

[1]ANON. *v.* ANON.

De debito ou le bref fust porte en un counte et le maner dont la dette fust due fust en autre Countie.

Ceo vous mostre A. qi cy est qe B. qi illoeqes est a tort lui detient etc. x. marcs dargent etc. et pur ceo a tort qe la ou mesme cesti A. tiel jour tiel an etc. lessa a mesme cesti B. son maner de E. pur x. marcs. a paier a .ij. termes de lan par oweles porcions cest assauer etc. qe le primer terme il paia .v. marcs. puis ad autres termes venimes et lui priames qil nous paiast les autres .v. marcs il paier ne les voleit etc. et mist auant une chartre qe tesmoigne le fet et le lees auantdit.

Will. Nous nentendoms mie qe a cesti bref deue estre respons Car le maner est en le Counte de Essex qest cause de la dette sicom suppose vostre bref et vostre counte et al vicounte de cel countie nauez pas porte vostre bref et demandoms jugement. Item si vous portassez bref daccounte a vicounte de autre Countie qe en le Counte ou il auoit fet

[1] Reported by *aa* only.

through purchase; and he has not said that we were a party to the contract, but only that some other, a monk, was. Wherefore etc.

Herle. You cannot deny that the goods were delivered into your possession and that they were converted to the profit of your house, and that sufficiently entitles us to make you responsible for the payment, and we ask judgment.

Malmerthorpe. Sir, they have counted of a contract made with one T., our monk, but they have not said that we were a party to the contract, and we ask judgment.

Bereford C.J. If I send my man to the market and he buy divers goods for my use and have them sent to my lodgings, and I use them, do you not think that I should be answerable?—*meaning that he would be so.*

Friskeney. Sir, you see plainly how he claims this debt, and he has naught to support his claim except suit; and therefore the Abbot tells you that he owes him naught. Ready etc. against him and against his suit.

Herle. To that you will not get, for we have said that the wool was used for the profit of your house, and that is an allegation which comes within the recognition of the county, and we have produced the monk's deed which shows the contract. Judgment whether you are entitled to your law.

And so to judgment etc.

ANON. *v.* ANON.

Debt: where the writ was brought in one county and the manor in respect whereof the debt was due was in another.

A. that is here showeth you that B. that is there wrongfully detains from him ten marks of silver etc., and wrongfully by reason that the said A. upon such a day in such a year etc. leased to the aforesaid B. his manor of E. for the sum of ten marks to be paid in equal portions at the two terms of the year, that is to say, etc.; and that at the first term B. paid five marks, and that afterwards at other terms we went and asked him to pay the other five marks, but he refused to pay them etc. And A. made *profert* of a charter which testified of the deed and lease aforementioned.

Willoughby. We do not think that you ought to have answer to this writ, for according to your writ and counting the manor in respect of which this debt arises is in the county of Essex, but you have not directed your writ to the Sheriff of that county; and we claim judgment. Again, if you were to address a writ of account to the Sheriff of a county other than that of which the Sheriff might have administration

administracion de vos biens vostre bref abatereit similiter si vous portassez bref de Meen il couent qil seit al vicounte del Counte ou les tenemenz sont qi sont tenuz de vous et ne mie ou le corps est. Similiter la ou annuyte est grante a prendre de certain soil il couent porter bref ou le soil est pur ceo qe si est cause sit ex parte ista.

Hengham. En plee de dette il ne couent mi porter al vicounte du Counte ou le contrat se fist ne en ceo cas en le Counte ou le maner est qe nous porteroms nostre bref en le Counte ou nous entendoms plus tost amener la partie a respoundre et si auoms nous fet jugement.

Will. Nous ne sumes pas oblige par lescript qil met auant jugement si a tiel fet deuoms respondre.

Hengham. Est ceo vostre fet ou noun.

Will. Nous ne poums dedire mais ore veut le fet si nous ne lui paiames a les termes assignez qe bien lui lirreit entrer sanz desturbance de nous et vous dioms qe meintenant apres le terme passe si entra il solom le purport de cel escrit et de nos chateux trouez deinz le maner[1] tiels com nous entrames et si fust il vtlage et puis vint a la pees et suist a la chauncerie et fist sa suggestion coment nous fuimes entrez et fuimes seisi de ceux chateux et porta bref vers nous et recouery ses chateux, et il ad conu le fet ; jugement.

Et sciendum quod multi fuerunt in oppinione qe si Willoughby out mis auant sa excepcion en tiele forme le bref qe vous portez est un bref de dette et lescrit pur quoi vous biez recouerir la dette si est un escript de couenant lequel nest pas obligacion et sur ceo ussont demoure en jugement rien ne ust il pris par son bref etc.

[2]ANON. *v.* ANON.

Dette. Un A. porta bref de dette vers un B. et demanda Cs. et tendi suite.

Toudebi. Nous prioms qe la suite seit examine en nostre peril.

Ass. Veiez cy taille qe tesmoigne la dette.

Tilton. A ceo nauendrez mie de puis qe vous auez arame suite et

[1] The copyist has clearly made some considerable omission here. What immediately follows seems to be the conclusion of a speech by *Hengham*. [2] Reported by *aa* only.

of your goods, your writ would abate. Similarly, if you brought a writ of mesne, such writ ought to be addressed to the Sheriff of the county wherein the tenements holden of you lie, and not to the Sheriff of the county wherein the person of the defendant happens to be. Similarly where an annuity is granted, charged upon certain land, the writ must be brought in the county wherein the land lies, because the cause of action arises there.

Hengham. We are not bound, in an action for debt, to address the writ to the Sheriff of the county where the contract was made, or as in this case, where the manor is; but we may bring our writ in that county in which we think we can most readily make the defendant answerable; and that is what we have done here.

Willoughby. We are not bound by the writing which he produces. Judgment whether we need reply to such a deed.

Hengham. Is this your deed or no?

Willoughby. We cannot deny it; but the deed declares that if we have not paid him at the assigned terms then he shall be entitled to enter without disturbance from us; and we tell you that immediately after the passing of the assigned term he did so enter in accordance with the tenour of this writing and of our chattels found within the manor [1] . . .

[*Hengham*] . . . as at the time of our entry, and so he was outlawed, and afterwards he returned to the peace and sued in the Chancery and stated his case, showing how we had entered and were seised of those chattels, and he brought his writ against us and recovered his chattels; and he has admitted the deed. Judgment.

And it is to be noted that many were of opinion that if *Willoughby* had made his exception in some such form as this: *your writ is a writ of debt; the writing on which you rely to recover your debt is a writing of covenant which is not a bond:* [2] and had abided judgment upon this, the plaintiff would have taken naught by his writ etc.

ANON. *v.* ANON.

One A. brought a writ of debt against B. and demanded a hundred shillings, and tendered suit. Debt.

Toudeby. We ask, at our peril, that the suit be examined.

Assheley. See here a tally that is evidence of the debt.

Tilton. You will not be allowed to use that, for you have tendered

[1] See note 1 on opposite page.

[2] The suggestion is that the form of action should have been, not debt, but debt upon covenant.

vous nule suite nauez dont nous demandoms jugement coment nous deuoms departir. Car le grand chartre voet qe nullus ponatur ad legem manifestam etc. mais ore ne sunt les testmoings qe suite et vous ne auez nule pur quoi vous ne poez a la lei auenir ne al auerrement sanz especialte.

Berr. Un bon pledour ne ust mie tendu suite en ceo cas einz ust counte en ceste forme et sil le veut dedire veez cy son fet qe le tesmoigne et sur ceo dust auer mis auant taille en escript avant qe les defendanz ussont defenduz les paroles de la count etc.[1]

[2]ANON. *v.* ANON.

Dette. Un A. porta bref de dette vers B. et mist auant taille.

Herl. La ou homme deit recouerir dette par my especialte il couent qe en lespecialte seit contenu la demande et qe la cause accord al counte mais ceo qe vous mettez auant pur especialte nest qe un fusselet en le quel nest pas la demande note Car il ny ad qe nochez par les quels homme ne pust conustre le quel il seiont deners ou marcs ou livres et homme put anoccer ou amenuser ceux noches a sa volunte et fere rasure sanz ceo qe nul homme put auer conussance jugement si par tiel fet qe nest especialte deit estre response.

Stonore. La cause est escrit sur la taille et par les noches put homme conustre la demande Car sil y eit plus mys qe estre ne dust joignez vostre contretaille et la faucez par tant et vous lauez veu ceinz par comun assent des Justices qe homme ad recouery en tiel cas par agard.

Herl. Ieo vy en temps Sir Johan de Metingham qe homme ne fust pas respondu a taille sil ny auoit date ouesqes et en tiel cas put homme fere examiner la suite.

Hert. Si troue fut rasure et nouel subscripcion mis vous purreiez bien dire qe ceo ne fust pas vostre fet.

Toudebi. Nient nostre fet prest etc.

Et alii e contra. Ideo xij. etc.

[1] Note that the reporter having got down Bereford C.J.'s *dictum* on the proper form of pleading does not care to follow the case further.

[2] Reported by *aa* only.

suit, and suit you have not got; and so we ask for judgment after what fashion we shall go away. For the Great Charter says[1] that *nullus ponatur ad legem manifestam etc.*, and here you can give no evidence but by the testimony of suit, and no suit have you got; and therefore you cannot get to your law nor to an averment in the absence of a specialty.

Bereford C.J. A good pleader would not have tendered suit in this case, but would have counted in this wise: *And if he will deny it, see here his deed in proof thereof*: and then he ought to proffer a tally in writing before the defendants have denied the allegations in the count etc.[2]

ANON. *v.* ANON.

Debt.

One A. brought a writ of debt against B. and proffered a tally.

Herle. Where a man would recover a debt by specialty, that which he claims should be set out in the specialty, and the claim [as set out in the writ] should agree with the counting. But here what you proffer as a specialty is naught but a spindle on which there is nothing noted whereby you can support a claim, for here is naught but notches, and whether they stand for pence or marks or pounds no man can tell. A man may notch or carve these notches at his will or may shave them away without anyone knowing anything about it. Judgment whether to such a deed as this, which is no specialty, he ought to have answer.

Stonore. The cause of action is written on the tally, and the amount claimed can be ascertained from the notches. If you think that there are more of them there than there should be, lay your counter tally upon it and so convict it. You have seen recoveries given in like circumstances in this Court by the unanimous judgment of the justices.

Herle. I have known cases in Sir John de Mettingham's time where a plaintiff was refused answer to a tally if there were no date thereon; and in such cases the defendant might examine the suit.

Hartlepool. If it be found that an erasure has been made and a new superscription substituted, then you might very well say that it was not your deed.

Toudeby. Not our deed. Ready etc.

And thereupon was issue joined; and so let a jury etc.[3]

[1] What the Great Charters of 1217, 1225, and 1297 actually say is: *Nullus Ballivus ponat decetero aliquem ad legem manifestam nec ad juramentum simplici loquela sua sine testibus fidelibus ad hoc inductis.* The Great Charter of 1215 omits *nec ad juramentum.*

[2] See note 1 on opposite page.

[3] Cp. with this the reports of *Beneyt* v. *Lodewyk* in *Selden Society's Year Books, Series* III, pp. 46-7, and of the anonymous case on p. 57 *infra.*

[1]ANON. *v.* ANON.

Dette. Un A. porta bref de dette vers Robert de N. et demanda C. *s.* les queus il dust auer paie a ij. termes et mist auant fet qe ceo testmoigne.

Lauf. Par cel fet ne put il rien demander car nous esteions en prison jour de la confection de ceo fet jugement.

Berr. En qi prisoun fust il et par ki enprisone et a ki suite.

Lauf. En la prison le Roi et a la sute mesme cesti A.

Hunt. Nous suiuons vers lui a la comune lei issint qe a nostre suite pour trespas qil auoit fet a nous si fust il enprisone et pur nostre gree fere del trespas auantdit il se obliga en la dette auantdit et demandoms jugement si par ceo fet ne serra il lie ne puis qil ne put dire qe nous sumus seignour de la prison ne Gaoler.

Lauf. A vostre suite fuimus enprisone et la fuimus malement demene tanqe ceste obligacion auions fet a vous et tant tost com nous lui aueions fet nous esteions deliueres par my vous et demandoms jugement si ceo fet nous deit lier.

Et de autre part : lei voet en tiel cas qe vous preignez surete des autres tant com il seit en prison et nient qil seit oblige en prison.

Berr. Vous dirrez sil fust enprisone par proces de lei a votre suite com il ad dit ou ne mie.

Lauf. Nous fuimus en prison et les Justices furent en dotaunce de lur reuenir et pur doute dauer longement demoure en prison tanqe autres foiths a lur venue issint feimus nous le fet jugement.

Heruy. Pur ceo qe vous ne poez dedire qe vous fustes en prison pur le trespas qe vous faites et pur ceo qe il vous relessereit cel trespas si feistes le fet pur quei agarde ceste court qe vous rendez les C. *s.* et seiez en la mercy etc.

[2]ANON. *v.* ANON.

Dette. Un A. porta son bref de dette etc.

How. Rien ne lui deit prest etc.

Spigurnel. A ceo ne deuez estre respondu par la reson qe vous dites une protestacion negatif rien ne lui deit et put auer duple entendement ou pur ceo qe unqes auant ces hures rien ne lui dust ou pur ceo

[1] Reported by *aa* only. [2] Reported by *aa* only.

ANON. *v.* ANON.

One A. brought a writ of debt against Robert of N. and demanded a hundred shillings, the which Robert ought to have paid at two terms, and A. proffered a deed which testified thus. Debt.

Laufer. He can demand naught by this deed, for we were in prison on the day on which it was executed. Judgment.

Bereford C.J. In whose prison was he, and by whom was he imprisoned, and at whose suit?

Laufer. In the King's prison at the suit of this same A.

Hunt. We have sued him at the common law, and he was imprisoned at our suit for the trespass he had committed against us, and to procure our grace for the aforesaid trespass he bound himself in the sum aforesaid; and we ask judgment whether he be not bound by this deed, for he cannot allege that we are either the lord of the prison or the gaoler.

Laufer. We were imprisoned at your suit, and we were illtreated until we entered into this bond to you, and as soon as we had entered into it we were delivered by your means, and we ask judgment whether this deed ought to bind us.

And besides this it was said: the law prescribes that in such a case you should obtain the guarantee of others while he is in prison, and that one in prison should not enter into a bond.

Bereford C.J. You must say whether he was imprisoned by process of law at your suit as he has alleged, or not.

Laufer. We were in prison, and the justices were in doubt as to when they would return, and so, as it seemed possible we might have to remain in prison for a long time till they came back again, we executed the deed. Judgment.

Staunton J. Seeing that you cannot deny that you were in prison on account of the trespass which you had committed and that A. was willing to remit this trespass to you if you executed this deed, this Court gives judgment that you pay the hundred shillings and that you be in mercy etc.

ANON. *v.* ANON.

One A. brought his writ of debt etc. Debt.

Howard. He owes him naught. Ready etc.

Spigurnel. You ought not to have answer to this, for what you say, namely, that he owes him naught, is a negative defence, and may mean either of two things, either that he has never owed him aught, or

qe il fust tenu a lui en ascun temps et il lui a paie et demandoms jugement si a cel auerrement qest duple deiue auenir.

Herl. Nous fumus tenu en ascun temps mais nous auons pleinement paie prest etc.

Spigurnel. De puis qe vous auez conu qe vous deuez largent et ne mostrez nule aquitance qe testmoigne la paie jugement etc.

How. Il nest pas mestier en ceo cas dauoir acquitance si noun en countre escript et demandoms jugement.

Spigurnel. Conissance fet en court si est de plus haute nature qe nest escript pur ceo qe conissance en court conferme, donc nous demandoms jugement etc.

[1]ANON. *v.* ANON.

Dette. Un Roger porta son bref de dette vers W. et en proeue de son dit il mist auant especialte qe testmoigne la dette.

Adam dist qil auoit paie la dette et de ceo mist auant acquitance qe testmoigne la paie estre faite.

Roger dedit le fet par quoi se joint entre eux jour done a quel jour Adam fust essone et lautre jour fist defaute pur quei fust agarde qe le pleintif recouerast sa dette et ses damages par taxacion des justices etc.

[2]ANON. *v.* ANON.

Dette. Alice qi fust la femme R. de K. porta bref de dette vers Walter de N. et demanda x. mars par deux escripts par diuers contracts en diuers temps et demanda lentier par un count etc.

Ass. respondi al un fet et dit nient nostre fet, prest etc., et quant a les autres .v. marcs nous vous dioms qe mesme ceste Alice porta bref vers nous en la court de C. et par agard de mesme la court recoueri la dette qe ore est en demande, et demandoms jugement si ele put accion auer.

[*Til*]*ton.* Donqe conussez vous le fet le quel fet est entier et nient dampne et vous ne mostrez mi le acquitance jugement etc.

Ass.[3] Nous voloms aider qele recouera mesme cele dette et nous trouoms en sa main lescrit nient dampne le quel vous auez conu pur quei agarde ceste court qe Alice recouere sa dette et Robert en la mercy etc.

[1] Reported by *aa* only. [2] Reported by *aa* only. [3] *Sic.*

that at some time he was indebted to him but has since paid him ; and we ask judgment whether you should be allowed to make an averment that has such a double meaning.

Herle. We were indebted to him at one time, but we have made full payment. Ready etc.

Spigurnel. Since you admit that you owe money and give no proof of payment, judgment etc.

Howard. There is no need for us in this case to produce an acquittance, unless it be in answer to a writing, and we ask for judgment.

Spigurnel. An acknowledgment made in Court is of a higher nature than is a writing, for an acknowledgment made in Court confirms [the writing] ; and therefore we ask judgment etc.

ANON. *v.* ANON.

One Roger brought his writ of debt against W. ; and, in proof of his claim, produced a specialty which was evidence of the debt. Debt.

Adam said that he had paid the debt ; and, in support of that, produced an acquittance which showed that the debt had been paid.

Roger denied the deed. And so issue was joined between them, and a day given to them. Upon that day Adam was essoined, and upon another day he made default ; and so it was ordered that the plaintiff recover his debt, and his damages by the taxation of the justices etc.

ANON. *v.* ANON.

Alice that was the wife of R. of K. brought a writ of debt against Walter of N. and demanded ten marks by reason of two writings testifying to divers contracts at divers times ; and she demanded the whole sum by one count etc. Debt.

Assheley answered one of the deeds by saying ' Not our deed. Ready etc. ; and in respect of the other five marks he said :—We tell you that this same Alice brought a writ against us in the court of C., and by the judgment of that same court she recovered the debt which she is now demanding ; and we ask judgment whether she can bring an action.

Tilton. Then admit the deed, which is still valid and not discharged ; and you produce no acquittance. Judgment etc.

Assheley.[1] We are willing to help Alice to recover this debt, and we find in her hand an uncancelled writing which you have admitted. Wherefore this Court gives judgment that Alice recover her debt and that Robert be in mercy etc.

[1] What follows seems to be the speech of a Judge and not of counsel.

[1]WALEWAYN *v.* REM.

Dette. Un Richard Walewayn porta son bref de dette vers Hughe Rem et counta qe a tort lui detynt etc. xx.*s.* dargent etc.

Hughe defendit tort et force et les damages etc.

Richard. Voillez cel defens.

How. Oil.

Richard. Et nous jugement de lui com de noun defendu par la reson qe nous auons counte vers lui en un plee de dette et auons tendu suite et auoms arraine damages de la detenue qe nous donne cause a recouerir damages et ausint largement com nous auons counte vers lui ausi largement deit il defendre mais il nad mie defendu la torteuouse detenue qe nous donne cause a pleder et demandoms jugement.

How. A ceo ne deuez auenir ne par tel excepcion auantage ne prendrez Car si ieo usse respondu al accion tut ust vostre counte este vicious ieo ne usse resorti pur count abatre Car il y ad ordre primes de excepcioner primes a la jurisdiction de court puis a la persone puis al counte puis a la variance entre bref et count et puis al accion pur quei etc.

Berr. Respondez.

Stonore defendist et dist qe rien ne lui deit prest etc. en countre lui et en contre sa suite par sa lei et par quanqe ceste court agarde qe fere le deiue.

Richard. Ceo defens nest mie receiuable de court et ceo vous proefs Car chequn defens couent estre en certain et sur certain point et nomement quant homme donne chief respouns et il ad dit qe rien ne nous deit qe put auer duple entendement ou pur ceo qe il aprompta tant de nous et ad paie on pur ceo qe rien ne aprompta de nous issint rien nous deit et demandoms jugement etc.

Hughe. Et nous jugement si nostre respons ne seit assez bon Car ceste parole rien ne lui deit est respons peremptorie a lun et a lautre pur quoi assez suffist.

Richard. Uncore ne serrez a tiel defens respondu Car il conust qe rien ne nous deit mais il ne dit mie qe rien aprompta de nous et demandoms jugement de la conusance de sicom il ad grante en conissance nostre demande.

[1] Reported by *aa* only.

WALEWAYN *v.* REM.

One Richard Walewayn brought his writ of debt against Hugh Rem, Debt.
counting that he wrongfully detained from him etc. twenty shillings in silver etc.

Hugh denied wrong and force and damage etc.

Richard. Is this your answer?

Howard. Yes.

Richard. Then we ask judgment of him as putting in no defence; and for these reasons. We have counted against him as in a plea of debt, we have tendered suit, and we have claimed damages for the detinue which entitles us to recover damages. As fully as we have counted against him so fully ought he to deny; but he has not denied the tortious detinue which has given us this right of action; and we ask judgment.

Howard. To that you ought not to get; nor will you get any advantage from such an exception. For if I had answered to the action, then, even though your counting had been demurrable I should not have harked back to abate your count; for there is an order in which exceptions are to be made—first, to the jurisdiction of the Court; second, to the person of the party; then to the counting; then to variance between writ and count; and then to the action. Wherefore etc.

Bereford C.J. Answer.

Stonore denied [liability] and said that he owed him naught. Ready etc. against him and his suit either by his law or in whatever other manner the Court should rule that he should proceed.

Richard. This denial is not receivable by the Court; and that I will make clear to you. Every traverse ought to be a definite traverse of a definite allegation. For example, when one is answering in chief and says that he owes us naught, that may mean either of two things: either that he has borrowed so much from us and has repaid us, or that he has never borrowed anything from us and, consequently, owes us nothing. And we ask judgment etc.

Hugh. And we ask judgment whether our answer be not good enough, for this plea that we owe him naught is a peremptory answer to both the one hypothesis and the other, and therefore it is amply sufficient.

Richard. For yet another reason you will get no reply to such an answer. For though he said that he did not owe us anything, yet he never denied that he had borrowed from us, and we ask judgment of his admission, since, by his admission, he has conceded our claim.

Hughe ut prius.

Richard. A la reconisance vous serrez bien resceu mais a defere la conisance ne serretz mie resceu Car conisance fet en court lie ausi haut en sei com fet especialte ceo vous proefs Car si ieo portasse mon bref de droit vers vous et vous voudrez granter les tenemenz contenuz en le bref estre mon droit ceste reconisance se estendreit ausi haut entre nous com si la mise eut este ioynte entre nous et passe en contre vous. Et de autre part nul fet qe vous purrez fere a nous vous rebotereit si tost daccion com freit conisance en court et vous lauez conu en teisant jugement etc. et sic ad judicium etc.

[1]ANON. *v.* ANON.

Dette demande par executours.

Les executours A. de E. demanderunt C.*s.* vers C. de A. qui executours il sont lui a presta e mostrent escript qe le tesmoigna.

Mutt. a tort demandez vous ceste dette car A. qi executours vous estes receust de C. un Molyn en alowance de ceste dette en la ville de N. e demandoms jugement.

Warr. E nous jugement desicum il ad conu le fet e il nad rien en poyng qe ceste dette acquitte tesmoigne mais tent un averement le quel nest pas receivable de courte en countre son fet demesne jugement etc.

Mutt. la recette du moulin est en notre pais et de ceo put pais avoir conusance.

Stonor. il poit aver pris le moleyn pur autre chose.

Mutt. Pur mesme la chose prest davorer.

Berr. pur ceo que vous avez conu qe cest vostre fet en courte le quel est simple en sey e vous navez nule acquitance ne rien facez qe un averement qi nest mie receivable en courte en contre vostre fet demesne si agarde ceste courte qe les executours recouveront et vous en le merci etc.

[2]ANON. *v.* ANON.

Dette demande par une femme qi fust executrice soule.

Une Agnes executrice du testament un Richard de B. porta son bref vers Adam de C. e demanda x. marcs dues al testatour.

Passley. ou fust ele fet executrice.

Will. mist avant le testament qi voleit qele soule fust executrice

[1] Reported by *aa* only.

[2] Reported by *aa* only.

Hugh as before.

Richard. It is quite open to you to make an admission, but the Court will not let you withdraw an admission ; for an admission made in court is as binding as a duly executed deed, and that I will show you ; for if I bring a writ of right against you, and you are willing to admit that the tenements set out in the writ are my right, such an admission would have consequences between us as far reaching as though issue had been joined between us and given against you. And further than this, no deed that you could give us would more promptly put you out of Court than does an admission made in Court. And this admission you have made in tendering your answer. Judgment etc.

And so the matter went for judgment etc.

ANON. *v.* ANON.

Debt demanded by executors.

The executors of A. of E. claimed a hundred shillings from C. which A., whose executors they are, lent to him, and they proffer a writing as evidence of the loan.

Mutford. You are claiming this debt wrongfully, for A., whose executors you are, received a mill situated in the town of N. from C. in satisfaction of this debt, and we ask judgment.

Warrington. And we ask judgment, since he has admitted the deed and has naught here to show that this debt has been discharged, and only offers an averment in opposition to his own deed, which the Court cannot receive.

Mutford. The mill was received within our hundred and so the hundred can make recognition of it.

Stonore. A. might have accepted the mill for some other debt.

Mutford. In discharge of this same debt. Ready to aver.

Bereford C.J. Seeing that in Court you have admitted this deed, which is an unconditional one, to be your deed, and you produce no acquittance, and do naught but tender an averment against your own deed, which the Court cannot receive, this Court gives judgment that the executors recover and that you be in mercy etc.

ANON. *v.* ANON.

Debt demanded by a woman that was sole executrix.

One Agnes that was executrix of the testament of one Richard of B. brought her writ of debt against Adam of C. and demanded ten marks that were due to the testator.

Passeley. How was she made executrix ?

Willoughby tendered the testament which showed that Agnes was sole

mais quant ele vint devant lordinary de prouver le testament lordinary assigna un autre e administra pur ceo qe ele fust si feble e endorsa son noun derere en le testament.

Herle. Sire ele ad mis avant un testament qi voet qe ele ad un coexecutour jugement du bref.

Will. vous veiez bien qe le drein volunte del testatour voleit qe Agnes fust executrice soule jugement si le bref ne seit assez bon coment qe lordinary eit baille a un autre ladministracion.

Berr. nous veioms par le testament ceo qe est la dryne volunte del testatour qe ele soule seit executrice par quoi celui qi est endorse darere en le testament ne abatera mie le bref tut ne seit il nome Car ceo qe nous veoms nous tesmoigneoms par quoi nous agardoms qe vous respondez outre.

Herle. donqe vous dioms nous qele ne put rien demander car veiez cy lacquitance son coexecutour.

Et mist avant lacquitance de celui qi fust endorse derere le testament.

Will. Sa acquitance ne nous deit nuyre car il ne fust pas executour purceoqe lordinary ne pust fere executour si noun en cas ou homme devie intestat mais Richard fist testament et executrice e le testament fust prouve jugement si lacquitance celi qe nest pas executour nous deit grever.

Berr. il voleit qil administra e ordeina la ou il vist defaillance en la executrice nome donqe del hure qil ad eeu administracion pur quoi ne vaudreit sa acquitance qe autrement insuereit qe vous qi estes executrice nome purreiez demander la dette qe celui qi avoit administracion avoit receu e ceo serroit un manere de fausine par quoi nous agardoms qe vous respondez al acquitance.

Will. dit qil navoit unqes administracion prest etc.

Herl. le revers etc.

[1]ANON. *v.* ANON.

Dette demande par executour sanz especialte.

Un executour demanda xl. marcs etc.

Howe. quoi avez de la dette.

Will. Suite bone.

[1] Reported by *aa* only.

executrix, but when she went before the Ordinary to prove the testament the Ordinary appointed another, who administered, on the ground that Agnes was too feeble, and he endorsed his name upon the back of the testament.

Herle. Sir, she has tendered a testament which shows that she has a coexecutor. Judgment of the writ.

Willoughby. You see plainly that the last will[1] of the testator was that Agnes should be sole executrix. Judgment whether the writ be not good enough even if the Ordinary have granted administration to another.

Bereford C.J. We see by the testament, which is the last will of the testator, that Agnes is to be the sole executrix; consequently he that is endorsed upon the back of the testament will not abate the writ, even if he be not named in it; for that which we see we testify of. Therefore we rule that you answer over.

Herle. Then we tell you that Agnes can demand naught, for here you see the acquittance of her co-executor.

And he tendered the acquittance of him that was endorsed upon the back of the testament.

Willoughby. His acquittance ought not to prejudice us, since he was not an executor, for the Ordinary cannot appoint an executor save in the case where a man dies intestate. But Richard made a testament and appointed an executrix, and the testament was proved. Judgment whether the acquittance of one that is not an executor can be to our detriment.

Bereford C.J. [The Ordinary] desired him to administer and made an order to that effect, because he distrusted the ability of her that was named executrix. Since, then, he has had the administration, why should not his acquittance be good? Otherwise it would follow that you that have been named executrix might demand payment of the debt which he that had the administration has already received, and that would be of the nature of a fraud; and therefore we rule that you plead to the acquittance.

Willoughby denied that ever such an one had had the administration. Ready etc.

Herle joined issue etc.

ANON. *v.* ANON.

Debt demanded by an executor in the absence of a specialty.

An executor demanded forty marks etc.

Howe. What have you in proof of the debt?

Willoughby. Good suit.

[1] For the difference between *testamentum* and *ultima voluntas* cf. Lyndwood's *Provinciale* (1679), p. 173, col. 2.

Howe. Sanz especialte ne nous poez mener en response qe suite nest qe testmoynance de contract dont si ceo testmoynance deive estre voche il covent qil pusse affermer estat de la persone celui qi lui ad voche mais ore est celui qi fust partie al contract mort e celui qi demande nest qe executour en qi persone tiele tesmoynance ne put estre afferme pur ceo qe il ne fust mie partie al contract primer pur quoi nentendoms mie qe cele suite qest testmoigne de autri contract en eus pusse estat affermer.

Hengh. Si celui qi fust principal fust en pleine vie ci en courte il serreit respondu a sa suite e estatut[1] nous donne tiel action com il avereit sil fust en pleine vie jugement si nous ne devoms estre respondu.

Spig. Nous ne pouons estre a mesme le ley en contre lui ne encontre sa suite ne prendre issue solom ceo que apent la ou suite est arraine.

Berr. respondez outre.

Spigurnel defendi en countre lui etc. e fust resceu a sa lei.

Secus est la ou homme demande vers executour il ne serront mie a lur ley vers les demandants. Nota qe cest la reson pur quoi qe homme qi demande vers executour ne serra mie respondu sanz ceo qil mostre especialte pur ceo qe sil fust respondu sanz fet donqe serroit il de meillor condicion vers les executours qe vers le principal car le principal se poit avoir acquite par sa ley mais executours ne pount lei fere de autri contract etc.

[2]ANON. *v.* ANON.

La ou .iij. executours porterent bref de dette vers un certain detteur en la courte le Roi qi fust tenu a lur testatour en xl.*li.* demande fust par le dettour par quoi il voleiont affermer qil furent executours il responderent e diseront par le testament e par ladministracion.

Le dettour demanda oy du testament.

Le testament fust leu e troue fust qe le testator avoit .iiij. executours en le testament nomez par quoi le dettour demanda jugement desicom il y avoit un executour e ne fust pas nome en le bref si a les .iij. devoit respondir.

Les executours diseiont qe eus iij. aveiont administracion en les biens le testatour soulement sanz le quarte e ceo fust tesmoyne e grante

[1] *Statute of Westminster II.* cap. xxiii. [2] Reported by *aa* only.

Howe. Without specialty you cannot make us answer, for suit is merely evidence in proof of a contract. If, then, such evidence is to be vouched, it ought to be able to prove the personal interest of him that has vouched it; but here the actual party to the contract is dead, and the demandant is merely an executor, in whose person such evidence cannot establish a right to sue, seeing that he was no party to the original contract; and therefore we say that this suit which testifies of another's contract cannot establish the demandant's right to sue.

Hengham. If he that was principal were alive here in court he would get answer to his suit; and the Statute[1] gives us the same rights as he would have if he were alive. Judgment whether we ought not to be answered.

Spigurnel. We cannot be at our law against him nor against his suit, nor can we take such issue as would be proper where suit is arraigned.

Bereford C.J. Answer over.

Spigurnel denied the allegations of the executor etc. and was received to his law.

The practice is otherwise where a demand is made against executors, who would not be put to their law against the demandants. And note that the reason of this is that one who demands against an executor will not be answered unless he can produce a specialty, for if he were answered without producing a deed he would be in a better position as against the executors than he would have been against the actual principal, seeing that the principal might have been acquitted by his law, while the executors cannot make their law in respect of another's contract etc.

ANON. *v.* ANON.

In a case where three executors brought a writ of debt in the King's Court against a certain debtor that was bound to their testator in the sum of forty pounds, the executors were asked by the debtor how they proposed to prove that they were executors. They answered and said [that they proved this] by the testament and administration.

The debtor demanded *oyer* of the testament.

The testament was read, and it was found that the testator had named four executors in the testament. Thereupon the debtor asked judgment whether, seeing that there was an executor that was not named in the writ, he ought to answer the three.

The executors said that they three alone, without the fourth, had been granted administration of the estate of the testator, and this was

[1] *Statute of Westminster II.* cap. xxiii.

par lur Offic[ial] e endorse en le testament e demanderent jugement si pur celui a qi unqes fust grante administracion serroms barre de la dette nostre testatour demander.

Le dettour. si jeo usse usee (*sic*) lacquitance de celui qi nest mie nome en le bref e (*sic*) qil avoit resceu la dette il vous serreit barre de la dette vers moi demander par quoi il couendreit qil fust nome en le bref. Et de autre part vos ne deuez mesconustre la persone qest nome en le testament.

HENGH. purceoque lacquitance celui qi nest pas nome en le bref serreit barre a les .iij. qi portont cesti bref si agarde ceste courte qil quergont meillor bref joint ovesqe le quarte etc.

[1]ANON. *v.* ANON.

Dette par un frere demande contre executour sanz nomer son Priour.

Un Walter de N. fust somons a respondir a frere Roger Chanoyn de Euerwik e a William Fauconer executours du testament William del Bacouse de la detenue de x. *li.* etc.

Sutton pur William deffendit e dit qe a ceo bref ne counte doit il respondir et par la reson qil mettont un frere Roger lur executour qest Chanoyn de Euerwyk e profes en le ordre e ne unt pas nome son Priour e demanda jugement etc.

Ass. sire par tant ne put il nostre bref abatre car nous vous dioms que nous demandoms rien en notre noun demesne mais en le noun le mort qy executours nous sumes e lavant jugement est reserve al mort dont nous dioms qe notre bref est assez bon car si nous nomassons le Priour notre bref abatereit Car le Priour nest pas executour e demandoms jugement si par tant pussez notre bref abatre.

Suttoun. de meillour condicion ne devez estre en ceo cas qe vous ne serriez si vous demandasez en votre noun demene mais si vous demandassez etc. sans fere mencion de votre Priour vous ne serriez nient resceu aussint de ceste parte.

Hert.[2] grante duresse serreit sil ne fussont respondu a cesti bref Car sil ne fussont ore respondu si serront il sanz remedie Car sil nomassont le Priour en lur bref pur ceo qe il nest pas nome executour issint ensuereit il qil serreiont forsclos dacion de cea e de la e ceo serreit duresse de lei pur ceo respondez outre.

[1] Reported by *aa* only.

[2] *Sic* in MS., but the speech that follows seems to be the speech of a judge.

testified and granted by the endorsement of the official upon the testament; and they asked judgment whether they could be barred from claiming a debt due to their testator by the omission from the writ of one to whom administration had never been granted.

The debtor. If I had received from him that is not named in the writ an acquittance and he had received the debt, that would have barred you from demanding the debt from me. Hence he ought to have been named in the writ. And, further than this, you cannot ignore one that is named in the testament.

Hengham C.J. Seeing that the acquittance of him that is not named in the writ would have barred the three that bring this writ, this Court rules that they sue out a better writ, joining therein the name of the fourth etc.

ANON. *v.* ANON.

Debt demanded against an executor by a triar that did not name his Prior.

One Walter of N. was summoned to answer Friar Roger, canon of York, and William Faulkener, the executors of the testament of William of Backhouse, for detinue of ten pounds etc.

Sutton, for William, denied [liability] and said that he need not answer this writ or counting, and for this reason, that the demandants had named as an executor one Friar Roger that was a canon of York and a professed member of his order, without mentioning his Prior; and he demanded judgment etc.

Assheley. Sir, he cannot abate our writ upon this ground, for we tell you that we are demanding naught in our own name, but in the name of the deceased, whose executors we are, and judgment has already been given in favour of the deceased; and so we say that our writ is good enough; for, indeed, if we had named the Prior our writ would abate, for the Prior is not an executor. And we ask judgment whether by such an objection you can abate our writ.

Sutton. You ought not to be in a better condition then you would be if you were making a demand in your own name; and if you were to demand etc. without mentioning your Prior you would certainly not be received. So here.

Hartlepool. It would be a great hardship if they should not be answered upon this writ, for they will be without remedy if they should not now be answered. For if they should name the Prior in their writ the consequence would be that they would be barred from right of action here and elsewhere, seeing that he was not appointed executor, and that would be a hardship of law. Wherefore answer over.[1]

[1] This seems to be the speech of a judge and not of a counsel.

Suttoun. quoi unt il de la dette.

E les autres mistront avant un escrit qe tesmogne la dette.

Suttoun. nient nostre fet prest etc.

Et alii e contra.

[1]BROWN *v.* ANON.

Dette demande vers executours par la ou les executours ne furent pas obligez.

Adam Brown porta son bref de dette vers A. de E. e N. de W. executours du testament S. de B.

Warr. quoi avez vous de la dette.

How. veiez cy son fet en quel fet est contenu qe vostre testator fust tenu a Adam en x. *li.*

En quel fet les executours S. ne furent pas obligez ne les heirs S.

Hengh. Sire nous nentendoms qe pur ceo fet nous devoms estre obligez Car pur ceo fet la persone soul est oblige le quel fet ne estent pas a autre persone qi nest nome en lescript jugement.

Hamp. executour representont la persone celui qi executours il sont e sont ordeinez a preferer ceo qe le mort dust aver fet dont il sont com une persone pur quoi pur mesme lescript qe le mort fust oblige le executours sont obligez. Et de autre part si S. ust devie sanz testament fere en ceo cas jeo averay bon accion vers les administrators qe sont ausi com executours dont de plus fort averay jeo ma accion vers ceux qe le mort ordeina sanz ceo qe il seit nome en lescript.

Lutt. pur forme de cel obligacion accion vous fust accru vers sa persone soul donc pur sa mort cest accion si est esteint del hure qe nul autre est oblige.

Hengh.[2] mesme la lei deivont les executours le defendant aver com les executours le demandant avereiont mais les executours le demandant avereiont accion a demander la dette le mort sanz ceo qe le dettour fust oblige a eux forsqe soulement al mort ausint deivont il respondir tut ne seiont expressement obligez.

Hamp. posons nous qe lescript parlast issint qe lui et ses heirs furent obligez sanz nomer les executours il couendreit en ceo cas porter bref vers le heir et le heir avereit eyde des executours sil ussent des biens

[1] Reported by *aa* only. [2] The following speech seems wrongly attributed, being, apparently, on behalf of the demandants, while *Hengham* was of counsel for the defendants.

Sutton. What proof of the debt have they?

And the demandants proffered a writing which is evidence of the debt.

Sutton. Not our deed. Ready etc.

And the other side joined issue.

BROWN *v.* ANON.

Debt demanded from executors where the executors were not bound.

Adam Brown brought his writ of debt against A. of E. and N. of W., the executors of the testament of S. of B.

Warrington. What proof of the debt have you?

Howard. See here his deed; which deed contains an acknowledgement that your testator was bound to Adam in the sum of ten pounds.

Now by this deed neither the executors nor the heirs of S. were bound.

Hengham. Sir, we do not understand how we can be bound by this deed; for by this deed S. was only personally bound, and the deed binds none but him that was named in the writing. Judgment.

Hampton. Executors stand in the shoes of him whose executors they are, and they are appointed to do those things which the deceased, whom they represent, was bound to do. They are therefore bound by the same deed by which the deceased was bound. And, further than this, if S. had died intestate, I should in that case have had a good right of action against the administrators who are also of the nature of executors. Much more, then, shall I be entitled to my action against those whom the deceased appointed, even though they be not named in the writ.

Luttrell. The form of this bond gives right of action only against the deceased personally. Consequently, since none other is bound, all right of action is extinguished by the death of the sole obligee.

Hengham.[1] The executors of the defendant ought to stand in the same position with regard to the law as the executors of the demandant would do. Now the demandant's executors would have a right to demand a debt due to their deceased testator without the debtor having been bound to them personally, or further than to the deceased alone. So here the defendants ought to answer although they were not specifically bound.

Hampton. Suppose the deed had declared that the testator and his heirs were bound, saying naught of executors. In such a case the proper course would be to bring action against the heir; and the heir would get aid from the executors, if so be that they had any goods

[1] See note 2 on opposite page.

le mort entremains et de pus qe le heir avereit eid de eux non obstante qil ne furent mie obligez expressement il semble qil serront liez mais qil ne seront pas nomez en lescript.

Hengh. de pir condicion ne deivont les executours estre qe sont estranger qe ne serroit le heir qest priue mais le heir sil ne seit pas nome il nest pas oblige pur quoi etc.

Herl. par la ou vous dites qe le heir avereit eid etc. il semble qe noun car eid est grante par la ou homme ne put aver remedie par excepcion mais en cas ou homme porte bref etc. le plegges tant com le principal ad assez dont paier etc.

Spig. il nest pas semblable. Car le heir ne put dedire le fet son auncestour donc de puis qil est oblige il lui covent respondir et avera eid des executours.

Herl. celui qe prie eid il suppose qe ceux qe sont priez pount doner plus haut response qe celui qe prie mais ore les executours ne pount doner si haut response qi sont estrangers com le heir qest priue al fet par quoi etc.

[1]SPARK *v.* ANON.

Dette demande vers le baroun et son femme par la contract la femme tant com ele fust sole.

Un John Spark se pleint vers William de K. et E. sa femme qe atort ne lui rendissont .xviij.*s.* etc. Et par ceo atort qe la ou mesme ceste E. tant com ele fust sole vint tiel jor tiel an etc. ala meson mesme cesti John etc. et del avant dit John aprompta les avantditz xviij. *s.* a paier tiel jor etc. prochain ensuaunt en mesme lan et en mesme le lu a quel jour assis de la paie lavantdite E. ne vint point ne nul homme pur lui ala paie fere par quoi mesme cesti John souvent pus ad venuz a les avantditz W. et E. et lur ad prie qe eus lui paiassont etc. eux paier etc. einz le detienent atort etc.

W. et *E.* sa femme defendent tort et force et diseront qe nul dever etc. et gageront la lei.

John. a la ley ne devez avenir Car de contract et de couenant fetz entre autres persones homme ne deit a la ley avenir mais le contract dont la dette est due fust fet entre John et E. vostre femme tant com ele fust sole.

Will. la ou homme demande vers autre sanz especialte la partie

[1] Reported by *aa* only.

of the deceased in their hands. Since, then, the heir would get aid of the executors, notwithstanding the fact that they were not expressly bound, it would seem that the executors in this case are bound, even though they are not named in the writing.

Hengham. The executors ought not to be in a worse condition than a stranger would be, nor than the heir, who is not a stranger, would be; for the heir, if he be not named, is not responsible. Wherefore etc.

HERLE J. In the circumstances where you say the heir would get aid, I do not think that he would; for aid is granted where a man cannot have remedy by exception; but where a man brings a writ etc., the pledges, so long as the principal has the wherewithal to pay, etc.

Spigurnel. The case is not a like one; for the heir cannot deny his ancestor's deed. So, since he is bound by it, he must answer it, but he will have aid from the executors.

HERLE J. He that prays aid of any one supposes that he whose aid is prayed can give higher answer than he that prays that aid can give; but here the executors, that are strangers, cannot give so high an answer as the heir that is privy to the deed can give. Wherefore etc.

SPARK *v.* ANON.

Debt demanded from husband and wife under the wife's contract made while she was sole.

One John Spark brought plaint against William of K. and E. his wife that they wrongfully detained from him eighteen shillings etc.; and wrongfully for this reason, that whereas this same E., while she was sole, upon such a day in such a year etc. came to the house of this same John etc., and from the aforesaid John borrowed the aforesaid eighteen shillings, to be repaid upon such a day etc. then next ensuing in the same year and in the same place. Upon the day appointed for the repayment the aforesaid E. did not come to make repayment, neither did any come on her behalf. By reason whereof this same John has since been oftentimes to the aforesaid W. and E. and has asked them to pay to him etc. [but they refuse] to repay them etc. and wrongfully detain them etc.

W. and *E.* his wife deny wrong and force, and say that they owe naught; and they waged their law.

John. To your law you ought not to get; for a man should not get to his law in respect of a contract or covenant made between other parties, and this contract, under which the debt is due, was made between John and E. your wife while she was sole.

William. Where a man demands from another, without specialty,

defendant purra eslire un dest .iij. voies ou estre a sa lei ou al averement ou mettre sei en enqueste et de pus qe nous avoms tendu une issue qest receivable de courte lequel vous refusez jugement. Estre ceo si nous ussoms tant avant plede qe execucion se freit de la dette ceo serroit vers le baron par quoi nous entendoms qe le baron serra resceu a sa lei.

John. si William serreit resceu a sa lei ceo serreit duresse et en countre lei pur ceo qe il purra bien a respondir en sei alaiant qe unges nul dette de lui aprompta ne nul ne lui deit etc. et verite dire pur ceo qe il ne fust partie al contract et issint serroit le tort uncore despuny qe serreit en contre lei.

Et pus furent il a la averement qe nul dever ne lui deveiont etc.

[1]ANON. *v.* MUSKET.

Dette demande vers le baron par la contract j sa femme tant com ele fust soule.

Ceo vous mostre Roger de N. etc. qe W. Musket etc. atort lui detient etc. et purceo atort qe tiel jour etc. Alice qe fust la femme mesme cesti W. ne lui paia point etc.

Ass. defendi et dit qe Roger par sa pleinte bie dreiner la dette vers W. et en sa renable demostrance si fet il une Alice partie al contract jugement de la forme.

Tilton. le fet la femme en ceo cas si est le fet le baron pur ceoqe il sont com une persone et par qant le baron deit respondre del contract sa femme. *Item* en cas ou homme demande dette vers executours il demande de autri contract et si deivont il respondre.

Ass. executours ne respondent mie del contract lur testatour sanz especialte et donqe prayont il de dire le fet. *Item* executours representont la persone le testatour et le baron ne represente forsqe sa persone demesne. *Item* nostre excepcion est a la forme et nous vous dioms bone forme etc. Et pur ceo atort qe la ou mesme cesti W. par Alice sa femme receust tant etc. et hec est bone forme licet femina predicta mortua.

Tilton. conussez le contract et pus ditez qe le contract ne vous deit grever.

Ass. ceo ne purroms mie purceoqe il ny ad fors un des .iij. voies

[1] Reported by *aa* only.

the party defending may chose one of three courses. He may wage his law, or he may aver, or he may put himself upon a jury. Since we have tendered an issue that is receivable by the Court and that issue you refuse, we ask judgment. Again, supposing that we had just now pleaded that execution of the debt had been obtained, [such execution] would have been obtained against the husband ; and consequently we submit that the husband is receivable to his law.

John. It will be a hardship and contrary to the law if William be received to his law, for it will then be possible for him to make good answer by alleging that he never borrowed aught from John nor owes him aught etc., and to make averment of this, because he was no party to the contract ; and so the wrong would remain without remedy, which would be contrary to the law.

And afterwards William made averment that he neither owed nor ever had owed him etc.

ANON. *v.* MUSKET.

Debt demanded from a husband under a contract made by the wife while she was sole.

Here showeth you Roger of N. etc. that W. Musket etc. wrongfully detains from him etc., and wrongfully because upon such a day etc. Alice that was the wife of this same W. did not pay him etc.

Assheley defended and said that Roger in his bill of complaint sought to prove the debt against W., while in his specific declaration he made one Alice a party to the contract. Judgment of the form.

Tilton. The deed of the wife is in this case the deed of the husband, for they are but one person, and consequently the husband is answerable for his wife's contract. Further, when anyone makes a claim against executors such an one is claiming under a contract made by others ; so here, too, W. ought to answer.

Assheley. Executors are not responsible for the contracts of their testator in the absence of a specialty. And then he prayed *oyer* of the deed.

Again, executors represent the person of the testator, and the husband represents naught but his own person. Yet again, our exception is to the form, and we suggest to you a good form as follows : ' And wrongfully for this reason, namely that whereas this same William received so much by Alice his wife etc.' ; and this is a good form, even though the wife aforesaid be dead.

Tilton. Admit the contract, and then plead that the contract does not bind you.

Assheley. That we cannot do, for only one of three courses is open

ou estre al averement et ceo ne purroms mie pur ceoqe ceo nest pas soeffrable de lei qe homme seit a sa lei de autre contract ou aprier qe la suite seit examine et ceo ne purroms mie qil couensist qe Alice fust present quant la suite serreit charge et examine jugement coment nous devoms departir.

Tilton. cest ala jurisdiccion de la courte et vous avez plede plus haut et ne mie pur ceo qe la ou vous ditez qe la courte nad mie poair a fere venir enqueste ceste a eus de alegger quant il vendront et deiuont aler a serment sanz bref et ne mie a vous qe vous ne poez tailler autri volunte sil voillent jurer degreer ou noun.

Alautre qe homme ne serra mie a sa lei de autre contract vous dites mal qe jeo pose qe executours portont bref de dette le defendant put estre a sa lei et si nest pas le contract entre mesme les persones.

Alautre il couendreit qe celui qe fust partie al contract seit present quant la suite serreit examine vous dites mal]qi ly gist nul[Car chescun serra examine privement et severalment.

Ass. tut vousissoms prendre issue par un de ceus .iij. voiez la courte ne soeffreit mie par la reson auantdit et de puis qe lei ne soeffreit point.

Tilton. de puis qe vous avez dit qe vous ne prendrez issue par nul negatif a notre pleinte donqe couent il granter laffirmatif qest a conustre la dette.

Ass. ceo ne couent il mie Car si la courte veie qe nous pussoms prendre issue par un des .iij. voies nous dirroms assez.

Tilton. cest a laccion et si vous demorrez la en jugement vous perderez sanz autre chose dire si la counte seit tiel qe vous pussez tiel issue aver.

Ass. weyua cel et defendi et dit qe accion ne put il aver purceoqe nul contract qe sa femme fist tant com ele fust couerte de baron ne dust ne porreit son baron charger jugement.

Tilton nous avoms dit qe le surment deuint a votre profist et de ceo devez respondre si com en cas ou enfant deinz age receit a son profit a son age il responde.

]–[These words seem superfluous.

to us: to make an averment, and that we cannot do, for the law does not permit a man to make his law in respect of the contract of another; to pray that suit be examined, and that we cannot do, for it would be necessary that Alice should be present when the suit was charged and examined.[1] Judgment how we ought to depart.

Tilton. That is for the Court to decide; and as you have already pleaded a plea of higher nature, you cannot now raise that question; for whereas you say that the Court has no power to impanel a jury, that is really a question for the jurors themselves to raise when they come and are going to be sworn in a matter where there is no writ, and not for you, for you are not entitled to interfere with other folk's willingness or unwillingness to be sworn.

Further than this, you are wrong in saying that a man cannot be at his law touching another's contract, for I put the case to you of executors bringing a writ of debt. Here the defendant may be at his law, and yet it is not a question of a contract between the actual parties.

Yet further, you are wrong in asserting that there is any necessity for the parties to the contract to be present when the suit was examined, for each one of these will be examined privately and separately.

Assheley. Though we were willing to go to an issue by one of those three ways, the Court would not let us for the reasons aforesaid, and because the law does not allow it.

Tilton. Since you have said that you will not take as your issue a denial of our plaint, you must then make an affirmative plea, that is, you must admit the debt.

Assheley. That is not necessary; for, if the Court allow that we can take our issue by one of three ways, we shall have plenty to say.

Tilton. That is to plead to the action; and if you abide judgment upon that issue, supposing that the Court be willing to let you take it, you will be beaten without being allowed to fall back upon any other defence.

Assheley waived the point, and denied [liability] and said that the plaintiff could not sustain his action for the reason that no contract made by the defendant's wife during coverture ought to or could charge her husband. Judgment.

Tilton. We have said that the loan was for your profit, and you ought to be answerable for it, just as an infant under age is answerable when he attains his age for what he has received to his own profit.

[1] The third course, which the reporter has omitted, was probably to go to a jury. Cf. *William's* speech in the preceding case. From what *Tilton* says immediately afterwards *Assheley* seems to have argued that the Court had no power to impanel a jury. It is difficult to see how he could have supported this contention. A jury was as usual and regular under a bill as under a writ.

Ass. jeo vous deny ceo la et tut fust ceo issint uncore nest pas semblable Car tut ceo qe enfant deinz age fet quant il vendreit a son age ille purra dedire mais en ceo cas la dette est demande vers le baron pur le contract qe sa femme fist.

Tilton. le contract vostre femme vous torna a profist et de ceo deuez respondre.

Ass. uncore ne deistes vous mie le quel ele receust a son profist etc. mais tantum qele receust mais vous dites ore plus largement qe vous mie feistes en counte counter pur quoi il semble qe vous avez abatu votre counter demesne qil couendreit aver dit qele receust a son profist si com en assise de novel disseisine si jeo me pleigne estre disseisi de certains tenemenz et puis en declarant ma pleinte me pleigne de plus qe ma primere pleinte ne veut ieo abateray ma pleinte demesne sic hic.

Tilton. en assise de novel disseisine si le tenant boutte avant quit-cleim del pleintif il couent qil respondist et si plede il plus haut qe son bref ne veut et uncore le bref esterra et ceo est pur ceo qe il est chace pur la partie a pleder si haut ita hic vous lui chacez de affermer sa accion.

Ass. il prent sa accion tantum del contract la femme qe ne put son baron obliger jugement. *Item* si la femme fust en vie il couendreit nomer la femme et son baron pur reson de couerture donc de puis qe ele est mort la couerture est defet ceo qe le baron ne serra mie nome et par consequens il ne respondra mye. *Item* si homme ne put mie recouerir vers celui qest partie al contract a mult plus fort vers celui qe nest mie priue al contract.

Tilton. si ieo preste a un Priour remuable .x. *li.* et puis il est remue ieo porteray mon bref vers son successour et si ieo pusse averer qe les deniers torneront a son profist il respondra non obstante qil ne purra mie estre oblige par le fet son predecessour ita hic.

Ass. non est simile qe tant com le Priour demora en son estat vous avez votre recouerir vers lui mais si le baron la femme fust mort vous ne recouerez iames.

Et issi ne prist il rien par sa pleinte mais sil ust counte qe mesme cesti W. par Alice sa femme receust tant et a son profist fesoit ele la receite il ust recoueri la dette etc.

Assheley. I do not agree in that; and, even though it were so, the case is not a like one; for an infant when he attains his age may disclaim all that he did while he was under age; but here the debt is demanded from the husband by reason of his wife's contract.

Tilton. Your wife's contract advantaged you, and you ought to be answerable for it.

Assheley. Again, you did not say that she received for her husband's profit etc., but only that she received; but now you allege further than you did in counting your count. Wherefore it appears that you have abated you own count, for you ought to have said that the wife received to her husband's profit; and just as in an assize of novel disseisin I should abate my own plaint if I complained of being disseised of certain tenements, and then, in counting my plaint, I extended my complaint beyond what was complained of in my first plaint, so is it here.

Tilton. If in an assize of novel disseisin the tenant proffers a quit-claim granted by the plaintiff, the plaintiff is entitled to reply to it, and if he puts in a plea of higher nature than is warranted by his writ, yet the writ shall stand; and this because he was compelled by the tenant to put in a plea of so high a nature. So here. You drive him to affirm his action.

Assheley. He relies for his right of action on the wife's contract only, and she could not bind her husband. Judgment. Further, if the wife were alive, it would be necessary to name both her and the husband, on account of the coverture. But now that she is dead the coverture has ceased, with the result that the husband shall not be named, and therefore he cannot be called upon to answer. Yet again, if a man cannot recover against one that is a party to the contract, much less can he recover against one that is not a party to it.

Tilton. If I lend ten pounds to a Prior that is removable and he be afterwards removed I shall bring my writ against his successor; and if I can aver that the money was used for his advantage, he will be answerable, even though he be not bound by the deed of his predecessor. So here.

Assheley. The case is not a like one, for you would have your recovery against the Prior while he continued in his office, but if the husband of the woman be dead you will never recover aught.

And so he took naught by his plaint; but if he had counted that this same W. had received so much by Alice his wife, and that Alice had received it to W.'s profit, he would have recovered the debt etc.

[1]ANON. *v.* ANON.

Dette demande vers un homme et sa femme del contract la femme durant la couerture.

Deux executours porterent bref de dette vers un homme et sa femme. *Hedon.* il unt counte de un contract fet entre lor testatour et notre femme la vous dioms nous qe si nul contract fust fet par notre femme ceo fust encontre notre gree et notre volente et nentende mie qe al contract fait etc. durant la couerture serra le baron tenu a respondre et qant a nous nous vous dioms qe nul denier ne lui devoms prest etc. en contre lui et en contre sa suite etc.

Et fust la lei resceu sanz ceo qe la femme iont la lei ouesqe lui.

Lauf. Sire pur dieu eiez reward qe si il ne respondist de la receite nous serroms sanz remedie Car sil face ore sa lei et nous portoms notre bref vers la femme qant ele serra sole ele vochera cel record et issint serroms nous sanz recouerir.

Berr. vous estes en cas de discas etc.

[2]ANON. *v.* ANON.

Dette ou le baron et la femme firent la lei.

Un homme porta un bref de dette vers un homme et sa femme le homme et sa femme gageront la ley et fust la lei fet en ceste manere la femme tint sa main outre le liuere et le baron de suth le liuere et fist la lei en son noun et en le noun la femme. Et la cause fust pur ceo qe ele receust la chose demande tant com ele fust sole et pur ceo mist ele la main outre le lieuere mais si le bail ust este fet a la femme tant com ele estoit couerte de baron Secundum opinionem quorundam ele ne ust pas tenu la main outre le lieuere ne son baron ne ust pas en son noun fet la lei et en le noun sa femme ionte mais en son noun demesne soulement purceoqe si la femme defaillist de la lei execucion ne poit nient fere vers la femme jugement etc.

[3]BANDON *v.* ANON.

John de Bandon marchand porta un Justice en le Counte de Cauntuar

[1] Reported by *aa* only, but is in the old edition of the YBB. of Edward II, p. 75 (Hilary term, *anno* 3). [2] Reported by *aa* only, but is in the old edition, p. 95 (Mich. *anno* 4). [3] Reported by *aa* only.

ANON. *v.* ANON.

Debt demanded against man and wife under the wife's contract made during coverture.

Two executors brought a writ of debt against a man and his wife. *Hedon.* They have counted of a contract made between their testator and our wife. We tell you that if any contract were made by our wife it was made without our consent and against our will; and we do not think that the husband is liable under a contract made etc. during coverture. And for our own part we tell you that never a penny do we owe him. Ready etc. against both him and his suit etc.

And he was received to his law without his wife having her law together with him.

Laufer. Sir, for God's sake, have regard to the fact that we shall be without remedy if he be not answerable for the money received; for if he now make his law, and we bring our writ against the wife when she shall be sole, she will vouch this record, and so shall we be without recovery.

Bereford C.J. You should have thought of all that before you lent your money.[1]

ANON. *v.* ANON.

Debt, where husband and wife made their law.

A man brought a writ of debt against man and wife. The man and his wife waged their law, and after this fashion they waged it. The wife laid her hand over the book and the husband underneath the book; and he made his law in his own name and in the name of his wife. And the reason of this was that the wife had received that for the recovery of which action was brought while she was sole, and therefore she laid her hand upon the book; but if the loan had been made to the woman during coverture she would not, according to the opinion of some, have put her hand upon the book, nor would her husband have made his law in his own name and in his wife's name jointly, but in his own name only, on the ground that if the wife had failed in her law execution could not have been levied against the wife.[2] Judgment etc.

BANDON *v.* ANON.

John of Bandon, merchant, brought a *Justicies*[3] in the county court of

[1] See footnote in *Year Books Series* III, p. 25.

[2] Cf. the previous case and *Middleton* v. *Vavassur* in *Year Books Series* III, p. 67.

[3] A *Justicies* was a writ directed to the Sheriff in some special cases by virtue of which he might hold plea of debt for a larger sum than forty shillings to which he was limited by his ordinary powers. Bracton mentions a *Justicies* in a case of Dower, and it lies also in Account, Annuity, Customs and Services etc.

vers un autre marchand de vij. marcs issint qe le defendant fist remuer la parole en banc a Eurewik[1] par un *Pone* et hors du banc fit remuer la parole en Eire par un *nisi prius* etc.

Hunt. defendi etc. prest est a defendre en contre lui et en contre sa suite par sa lei.

Mutt. a la lei navendrez point Car nous pledoms ore a lei marchand et avoms mis avant taille.

Kyng. vous nestes pas devant marchands einz estes en la courte nostre seignour le Roi par quoi nous entendoms qe vous devez pleder ceinz a comune lei et vous ne mettez avant si noun taille et tendoms la lei la quele vous refusez jugement etc.

Spigurnel. durant ceste Eire il ne put devant marchands ne aillours deinz ceste counte dreiner sa demande solom la lei marchande.[2]

Hunt. pur quoi ne ust il attendu ces auantages mais si vostre bref fust conceu solom la forme de comune lei ceo serroit pur vous mais de puis qe vostre bref est conceu en forme de la lei especiale par la ou il dust dire sicut per legem marchandorum nous nentendoms mie qe en ceo cas serret vous resceu a votre lei jugement.

Spig. ne vint point.

Berr. volez autre response doner.

Hunt. nous sumes demorez en vos agards nos avoms tendu etc. le quel il refusont jugement.

Hengh. nous offroms notre proeve S. E. et G. qe furont al amesurement del blee pur les qeus nous sumes icy prest de prouer solom la lei marchande ausint com nostre bref veut et il refuse la proue jugement de lui com de noun defendu.

Berr. volez ceo proue.

Hunt. ut prius.

Berr. la courte ne veut mie qe vous seiez a votre lei en ceo cas.

Hunt. ut prius.

Berr. John de Bandoun porta son bref de dette vers un Rauf et demanda .vij. marcs par un Justices forme secundum legem mercatoriam et il ad mis avant une taill la quele il tend aprouer par .iij. scilicet N. E. et S. qe esteiont al blee mesurer et livere a vous et par vostre lei vodrez vous couerir laquele ceste courte en ceo cas [ne veut mie] et vous refusez

[1] I do not understand the history of this case. The Courts of King's Bench and Exchequer sat at York from 1298 to 1305. From 21 Edward I (1283) to 6 Edward II (1313) there was no Eyre of Kent; and in the Commission of this latter Eyre was neither Berewick nor Bereford, either of whom the abbreviation 'Berr.' might possibly represent. And what had become of the matter from 1283, at the latest, until 1313? We seem driven to suppose that it was not at an Eyre of Kent that the case was heard, even though it was apparently commenced in the County Court at Canterbury.

[2] *Sc.* the *Statute of Merchants*, 13 Edward I. See *Statutes of the Realm*, I, p. 99.

Canterbury against another merchant for the recovery of seven marks. The defendant had the hearing removed by a *Pone* into Bank at York, and out of Bank had it removed by a *nisi prius* into Eyre etc.

Hunt denied etc. He is ready to deny by his law against him and against his suit.

Mutford. To your law you will not get, for we are pleading now under Law Merchant, and we have proffered a tally.

Kingshemede. You are not before merchants but in the Court of our Lord the King. Wherefore we submit that you must plead here in accordance with the common law; and you have naught to show but a tally; and we offer to make our law, and you refuse to let us do so. Judgment etc.

Spigurnel. Neither before merchants nor anywhere else than here can he within this county during this Eyre establish his claim [even] under Law Merchant.[1]

Hunt. Why did he not wait till he could have this advantage?[2] It was open to you to formulate your writ after the common law, but since your writ, that is drafted after the special law, ought to have said 'as provided by the Law Merchant,' we do not understand how you can, in this case, be received to your law. Judgment.

Spigurnel did not come.

BEREFORD C.J. Do you want to make other answer?

Hunt. We abide your judgment. We have tendered etc. which they refuse. Judgment.

Hengham. We offer our witnesses in proof, S., E. and G., who were present when the corn was measured; and by them we are here ready to make proof in accordance with the Law Merchant as our writ sets out; and he refuses our proof. Judgment of him as putting in no defence.

BEREFORD C.J. Will you accept this proof?

Hunt as before.

BEREFORD C.J. The Court cannot let you be at your law in this case.

Hunt as before.

BEREFORD C.J. John of Bandon brought his writ of debt against one Ralph, and claimed seven marks by a *Justicies* under the Law Merchant; and he has made proffer of a tally, which he offers to prove by three witnesses, to wit N., E. and S., that were present at the measuring and delivery to you of the corn, while you want to acquit yourselves by your law, a course which the Court is not, in the circumstances, disposed to let you take, and you refuse the proof which John offers

[1] *Sc.* the *Statute of Merchants*, 13 Edward I.

[2] i.e. when the Eyre was concluded. See *Introduction*, p. xvii.

la proue qil tend solom la lei marchand et solom la nature de son bref par qei agarde ceste courte qe John recouere sa dette et ses damages etc.

ANON. *v.* BUTTERLEY.

Dette demande qe soune en un annuyte.

Un Henri porta son bref de dette vers John de Butterley et counta qe atort lui deteint .L. marcs etc. et pur ceo atort qe la ou il lessa al avantdit John etc. rendant al avandit H. a terme sa vie .xx. *s.* par an la quele rente il lui paia .iij. anz etc. et issint detynt il arrirages de les .l.*s.* qe arere lui sont de .ij. aunz et dimidium.

Spig. quoi avez de la dette.

Wilby. veiez cy votre fet par quoi vous estes liez.

Et volleit qe John se avoit oblige etc. a paier ceste rente a tote sa vie et a ceo fere si troua il .iiij. plegges des queus chescun se avoit oblige en le tut issint qe si lauandit John faille de ascun terme etc.

Spig. le fet par quoi il biont ceste dette dereyner vers nous veez qe John seit tenu a rendre a H. a tote sa vie chescun an xx. *s.* le quel fet soune en un annuyte et demandoms jugement si bref de dette igise en ceo cas.

Will. nous avoms mis auant votre fet en courte par quel fet vous estes lie grauntez le fet ou dediez et puis demandez jugement.

Spig. nous grantoms bien le fet mais nous vous dioms qe le fet soune en une annuyte et annuyte soune en franc tenement la ou le fet veut qe John est tenu a lui a tote sa vie en xx. *s.* et nentendoms mie qe vous pussez par bref de dette franctenement trier.

Will. et nous jugement de puis qe vous avez conu le fet pur quoi vous estes lie a la dette et a la soute de ceo avez troue .iiij. plegges les queus sont obligez tutz com principals dettours si vous defailastes de la paie pur quoi nous demandoms jugement si vous ne devez respondre a votre fet demesne le quel fet est conu en courte.

Berr. il ne demandont si noun tantsoulement les arrirages de ceste annuyte de temps qe passe est com en forme de dette qil sil demandast chose qe serroit auener autre serroit pur quoi ne deit il respondre a les arrirages de puis qil mostre fet qe tesmoigne son dit le quel fet vous avez conu.

in accordance with the Law Merchant and the nature of his writ. By reason of all which this Court gives judgment that John recover his debt and his damages etc.

ANON. *v.* BUTTERLEY.

Where the debt demanded is of the nature of an annuity.

One Henry brought his writ of debt against John of Butterley and counted that he wrongfully detained from him fifty marks etc.; and wrongfully for this reason, that whereas he, Henry, leased to the aforesaid John etc. to pay to the aforesaid H. for the term of his life twenty shillings annually; the which rent John paid to him during three years etc. and so detains from him arrears amounting to fifty shillings, being his arrears for two years and a half.

Spigurnel. What evidence have you of the debt?

Willoughby. See here your deed by which you bound yourself.

And the deed set out that John had bound himself etc. to pay this rent during the whole of his life, and to secure this he found four pledges, each of whom had made himself responsible for the whole amount, so that if the aforesaid John should make default at any term etc.

Spigurnel. By the deed by which he wants to prove this debt against us you see that John is bound to pay to H. twenty shillings every year during his whole life; the which deed, then, savours of an annuity; and we ask judgment whether a writ for debt lies in these circumstances.

Willoughby. We have tendered your deed in Court, by which deed you are bound. Admit the deed or deny it, and then ask judgment.

Spigurnel. We freely admit the deed, but we tell you that the deed savours of an annuity, and an annuity savours of a freehold, since the deed says that John is bound to Henry in twenty shillings [a year] for his whole life, and we do not think that you can try a question of freehold under a writ of debt.

Willoughby. And we ask for judgment since you have admitted the deed by which you are bound to the payment; and to secure this payment you have found four pledges, who are all severally bound as principal debtors in case you should make default in payment. Wherefore we ask judgment whether you ought not to answer to your own deed, the which deed has been admitted in Court.

Bereford C.J. Henry is claiming only the arrears of this annuity which have accrued in the past by this writ of debt. If he were claiming something which had yet to accrue, it would be another matter. Why should John not answer to the claim for arrears, since Henry produces a deed which confirms what he says; and that deed you have admitted?

EX BIBL. UNIV. EDINBURGEN. *

Spig. si cesti bref estoise chescun bref de dette qest en cas de annuyte estera qe serroit grant duresse Car issi dereinereit homme franctenement par bref de dette mais si vous agardez qe nous respondissoms a cesti bref de dette nous respondroms asset.

How. il unt mis avant votre fet par plegges des queus chescun est oblige en le tut com principal dettour issint qe si il voleit porter son bref vers les plegges sans vous ieo entenk auer recouerir vers les plegges qe sont accessories pur qi nient donqe vers vous de puis qe vous estes principal.

Spig. vous sauez bien qe la nature de bref de dette est tiel qe la ou homme ad recoueri par ceo bref qe la dette est esteint aremeant mais sil recouerast par cesti bref accion lui fust autre foith accru a demander par bref de annuyte et issint put il auer lun et lautre quant il voudreit porter bref.

Berr. pur ceo qe vous avez porte votre bref de dette et avez conu pur my une annuyte et avez mis avant fet qe tesmoigne le quel fet soune en franctenement elisez vous le quel vous volez tenir a cesti bref issint qe lescrit seit esteint pur tutz iours ou vous volez lesser cesti bref et aler a votre bref de annuyte.

Will. latorne Henry se tent al annuyte.

Pur ceo agarde ceste courte qe vous ne preignez rien par votre bref etc.

[1]FITZJOHN *v.* ANON.

Dette demande vers plegges.

Richard le fitz John porta de dette (*sic*) vers .xij. plegges et demanda de eus .C. *s.* et .x. *d.* et counta vers chescun severalment et demanda de eus la dette enterement et mist avant fet qe tesmoigne qe cesti Richard avoit vendu chateux a R. et S. nomement furement iorge pur C.*s.* et x. (*sic*) a paier a certain terme assigne a qi les avantditz R. et S. trouveront lui ceux xij. nomez en le bref destre lur plegges et chescun de eus se obligea en le tut si R. et S. principals dettours ne paiassont.

Migg. cel escrit veut qe nous com plegges R. et S. sumes tenuz a celui Richard etc. pur chateux qil vendi a les avantditz R. et S. qe sont principals dettours et nous voloms averer par bon pais qil unt

[1] Reported by *aa* only.

Spigurnel. If this writ be allowed then every writ of debt brought in a case of annuity will have to be allowed, and that would entail much hardship, for a man would so be enabled to establish a claim to a freehold by a writ of debt. But if you rule that we must answer this writ of debt, we will answer it to the full.

Howard. Henry has produced your deed guaranteed by pledges, each of whom is severally bound in the whole amount as principal debtor, so that if he wanted to bring his action against the pledges alone, without you, I am of opinion that he could recover against the pledges, who are [only] accessories. Why then should he not recover against you who are a principal party ?

Spigurnel. You know very well that the nature of a writ of debt is such that when a man has recovered a debt under such a writ the debt is extinguished for evermore ; but if Henry recover under this present writ he will be at liberty to claim again by a writ of annuity, and so will be able to recover a second time whenever he likes to bring his writ.

Bereford C.J. Since you have brought this writ of debt and have admitted that it is really an annuity, and since you have proffered a deed in evidence which savours of freehold, elect whether you will hold by this writ, with the result that the deed will be of none effect for ever afterwards, or whether, letting this writ go, you will betake yourself to a writ of annuity.

William, the attorney of Henry, betakes himself to the annuity.

Therefore this Court gives judgment that you take naught by your writ etc.

FITZJOHN *v.* ANON.

Debt demanded against pledges.

Richard Fitzjohn brought a writ of debt against twelve pledges, demanding from them a hundred shillings and ten pence, and counted against each one of them severally and demanded from each one the whole debt ; and he proffered a deed which testified that this Richard had sold goods to R. and S., to wit corn and barley, for one hundred shillings and ten pence, to be paid at a certain assigned date ; to secure which payment the aforesaid R. and S. found the twelve named in the writ to be their pledges, each of whom was bound in the whole sum in case R. and S., the principal debtors, failed to make payment.

Miggeley. This writing declares that we, as pledges for R. and S., are bound to this Richard etc. for goods which he sold to the aforesaid R. and S. who are the principal debtors ; and we are ready to aver by trustworthy neighbours that R. and S. have paid in full and have a good

EDINBURGH UNIVERSITY LIBRARY
WITHDRAWN

pleinement paie et unt bon acquitance de lui et demandoms jugement sil puisse de reschief ceste dette demander.

Heigh. grantez primes si ceo seit votre fet ou noun.

Migg. ut prius.

BERR. est ceo votre fet ou noun.

Migg. nous ne pouoms dedire mais nous dioms qe R. et S. qe sont principals dettours unt pleinement paie ceste dette et unt lacquite vers eus et ceo voloms averer pur bon pais.

BERR. pur quoi en ussez garny R. et S. qe sunt principals dettours pur testmoygnance des bones gentz qil ussont este cy a ceste iornee pur vous aver acquite ou al meins qil vous ussont baille lacquitance et pur tant serroit puis vostre recouerir le plus cler de ceo dette qe si vous lui paiasset pur lur dit etc.[1]

Migg. il receurent les chateux pur queus ceste dette dust estre paie dont il apent a eux daver acquitance et ne mie a nous par quoi il semble qe ceo qe nous tendoms assez suffist. Estre ceo cest la malice Richard qe les principals dettours ne sont mie nomez en cesti bref pur ceo qe il unt lacquitance de vers eux de ceste dette.

BERR. pur ceo qe chequn de vous ad grante qe cest son fet et pro tanto avez conu la dette contenu en lescript vous navez acquitance si agarde ceste courte qe Richard fitz John recouere vers vous C.*s.* et x.*d.*

[2]FARRINGDON *v.* BRAY.

Dette demande par escript ou nul certain ior fust de la paie.

Michael de Faryndone demanda vers Richard le Bray .xx. marcs et sur ceo mist auant escript qe voleit qe R. se auoit oblige al auantdit Michael quel hure qil voleit entrer en Religioun de estre Hospituler qil lui durreit .xx. marcs pur chivals et sil ne entrast point qil lui durreit ▪xx. marcs mais en lescript ne mott contenu nul certain iour de la paie.

Warr. demand sil fust auowe et poinct.

Warr. sire nous nentendoms mie qe a tiel counte deit il estre respondu car il ad counte qe atort lui detient xx. marcs et nad pas assigne

[1] The text of the latter part of this speech is very obscure. [2] Reported by *aa* only.

acquittance from Richard ; and we ask judgment whether he can again demand this debt.

Heigham. First admit the deed to be yours or deny it.

Miggeley as before.

Bereford C.J. Is this your deed or not ?

Miggeley. We cannot deny it, but we tell you that R. and S., the principal debtors, have paid this debt in full, and have acquitted the sureties of liability for it, and this we will aver by trustworthy neighbours.

Bereford C.J. Why did you not give notice by trustworthy folk to R. and S., who are the principal debtors, to be here to-day to acquit you [by their evidences] or at least to send to you their own acquittance ; for by that course your non-liability for this debt would have been made clearer than by your mere allegation that you had discharged it through them.

Miggeley. R. and S. received the goods in respect of which this debt is payable. It is for them, then, and not for us, to be provided with an acquittance ; and therefore it seems that what we offer is sufficient. And further than this, it is owing to Richard's malice that the principal debtors are not named in this writ, because they have their acquittance of this debt.

Bereford C.J. Seeing that each one of you has admitted that this is his deed and has, *pro tanto,* admitted the debt set out in the writing, and that you have no acquittance, this Court gives judgment that Richard Fitzjohn recover against you one hundred shillings and ten pence.

FARRINGDON *v.* BRAY.

Debt demanded by a writing wherein no certain day was assigned for payment.

Michael of Farringdon demands from Richard Bray twenty marks, and in support of his demand proffers a writing which shows that Richard had bound himself to the aforesaid Michael, when he wished to take vows and become a Hospitaller, that he would give him twenty marks for horses, and that if he did not take such vows he would give him twenty marks ; but the writing contained no word as to any certain day for the payment to be made.

Warwick asked if Michael were professed ; and [it was said that he was] not.

Warwick. Sir, we do not think that he ought to have answer to such a count, for he has counted that Richard wrongfully detains from him twenty marks, and he has stated no reason in his count why

cause en son counte par la quele la dette lui fust due et lescript qil mette avant si est condicionele de quoi il couendreit a ceo qe il semble qil ust fet mencion dont demandoms jugement.

Migg. conussez le fet et nous serroms tost a un.

Warr. uncore ne deit il estre respondu Car nul home put damage recouerer en curt sil ne pusse mostre qil seit endamage dont nous vous dioms qe en lescript qil mette avant pur nous lier en ceste dette ne ad nul certain iour limite de paier la dette et celui qe veut recouerer damage ceo couendreit estre en certain et desicom il ny ad nul certain ior en counte countant qil demandera de nous la dette pur quoi il pusse assigner a cel temps iesqes a cel temps qe nous lauoms detenu et issint a son damage pur quoi nous demandoms jugement.

Migg. le viconte vous comanda de part le Roi qe feistes la paie par un bref qe la est et uncore ceo est deux anz puis qe ceo bref fust purchace et lavez detenu et uncore fetes pur quoi vous ne poez dedire qe nous ne sumes endamages et demandoms jugement si vous pussez pur tant nostre counte abatre.

Warr. vous countez qil fust oblige en cele dette apaier a vostre volunte qest en noun certain et celui qe veut arramer damage il couent qil seit de certain temps donc desicom en cel escript ny ad nul certain jour de la paie qant ele dust estre faite ne vous navez point dist qe vous venistes a nous certain ior pur ceste dette demander jugement.

How. qant homme se oblige par fet et mette certain ior en ceo cas ne put homme demander la paie avant le ior passe mais en cas un homme se oblige par escrit sanz assigner certain ior de la paie maintenant sur le fet put home la dette demander a la volunte celui a qi le fet est fait pur quoi il semble qe le fet est assez bon.

Warr. nous vous dioms qe mesme celui Richard dona al avantdit Michael en alowance de la dette qe ore est en demande un mees et une vergee de terre etc. en G. par quoi nous demandoms jugement sil put ceste dette demander.

Migg. qi auez vous de ceo.

Warr. prest etc.

Et alii e contra.

the debt has become due to him ; and the writing that he tenders shows a conditional contract, and we are of opinion that Michael should show that the condition has been fulfilled ; and therefore we ask judgment.

Miggeley. Admit the deed, and we shall quickly be at one.

Warwick. Yet again he ought not to have answer, for no one can recover damages in Court if he cannot show that he has received damage ; and in respect of this we tell you that in the writing which he tenders to make us liable for this debt there is no certain day limited for the payment of this debt ; and it behoveth him that will recover damages to lay them certainly. And since in his counting he counted no certain day whereon he could claim payment from us, and could not, consequently, lay that at such certain time we refused payment, and that he was thereby endamaged, we ask judgment.

Miggeley. The Sheriff, on behalf of the King, commanded you by a writ, which is here, to make this payment. It is now two years ago since this writ was purchased, and for so long have you withheld payment and you still withhold it ; and therefore you cannot deny that we have suffered damage ; and we ask judgment whether you can abate our writ upon such grounds.

Warwick. You count that Richard was under bond to pay this debt at your will, and that is an uncertainty. Now he that lays damage must lay it as of a time certain. Therefore, since in this writing no certain day for payment is limited whereon the payment ought to be made, nor have you alleged that you came to us upon any certain day to demand payment of this debt, we ask judgment.

Howard. When a man binds himself by deed and names a day certain, then, in that case, he cannot demand payment until such day has passed ; but where a man binds himself by a writing without assigning any certain day for making payment, such a deed entitles him in whose favour it was made to demand payment whenever he will. This being so, the deed seems good enough.

Warwick. We tell you that this same Richard gave to the aforesaid Michael, in satisfaction of the debt now in demand, a messuage and a virgate of land etc. in G. ; wherefore we ask judgment whether Michael can demand this debt.

Miggeley. What have you in proof of this ?

Warwick. Ready etc.

And thereupon was issue joined.

[1]ANON. *v.* PAGE.

Dette ou damages furent recouerez sans taxacioun.

Un Robert porta bref de dette vers John Page et dit qe atort lui detient xx. *s.* etc.

Hengh. quoi auez vous de la dette.

Spig. suite bone.

Hengh. qe rien ne lui deit prest aferer en countre lui en countre sa suite par sa lei.

Alio die qe John auoit de fere sa lei il failli de sa lei.

Met. pur ceo agarde ceste courte qe Robert recouere la dette et ses damages.

John pria taxacion.

Spig. taxacion ne deit il aver Car ceo couendreit estre par un des .ij. voies ou par pais ou par discrecion des Justices et par nul de ceux ne puit il taxacion auoir Car il ne se mist en lun ne en lautre mais se prist a une lei ou il se fist mesme jugement issint qe sil ust fet la lei il ust este assolez de la dette a tutz iours dont desicom si il ust fet la lei il ust passe quitte del principal qe est la dette et del accessories qe sont les damages ausint serra il condempne en lun et en lautre de puis qil ad failli de sa lei Car qui dat adversario suo juramentum facit adversarium suum sibi judicem.[2]

Hengh. il piert qil deit taxacion auer qe de pir condicion ne serrai ieo vers un estrangere qe ieo ne serrai vers le Roi mais en bref de trespas coment qe trespas seit atteint en ma persone ieo auerai taxacion ita hic Car Statut veut qe nullus liber homo etc.

Migg. non est simile quia non cecidit in misericordia etc.

[3]ANON. *v.* ANON.

Dette demande par executours ou le testament fut ars.

Une Alice iadis la femme R. et W. demanderunt [vers] J. de W. xl. marcs et vers un Thomas xx. *s.* com executours et counteront severale counte vers chequn de eus dont John a deprimes demanda qil affermassont a deprimes lur persones responables pur les executours Richard.

Frisk. pur A. et W. ses executours il fist un testament qe fus proue par lequel a eus fust granta a eux administracion et apres le

[1] Reported by *aa* only. [2] It looks as if Spigurnel misquoted a Romanist maxim originally applied to the quite different case of tendering a decisory oath to the adversary, which does not occur in the Common Law. [3] Reported by *aa* only.

ANON. *v.* PAGE.

Debt, where damages were recovered without taxation.

One Robert brought a writ of debt against John Page, alleging that he wrongfully detained from him twenty shillings etc.

Hengham. What proof of the debt have you?

Spigurnel. Good suit.

Hengham. Ready to aver by his law against him and his suit that John owes him naught.

Upon another day when John had to make his law, he failed to make his law.

METTINGHAM C.J. This Court, therefore, gives judgment that Robert recover the debt and his damages.

John prayed taxation.

Spigurnel. He ought not to have taxation, for that ought to be awarded by one of two ways: either by a jury or by the discretion of the justices. Now by neither of these means can he get taxation; for he put himself on neither jury nor Justices, but betook himself to his law, wherein he himself passed judgment upon himself, since if he had made his law he would have gone quit of the debt for ever. Since, then, if he had made his law and had gone quit of the principal, that is, of the debt, and of the accessories, that is, the damages, so now he will be cast both in the one and the other, since he has failed in his law; for he that pledges his oath to his adversary makes his adversary his judge.[1]

Hengham. It seems that he ought to get taxation, for I shall not be in a worse condition against a stranger than I shall be against the King; and in a writ of trespass, even though the trespass be attainted in my person, yet shall I have taxation. So here; for the Statute[2] enacts that no free man etc.

Miggeley. The case is not similar, for he was not put into mercy.

ANON. *v.* ANON.

Debt demanded by executors of a will that was burnt.

One Alice, that was formerly the wife of R., and W. claimed, as executors, from J. of W. forty marks, and twenty shillings from one Thomas, and they counted a several count against each of them. Then John at once demanded that they should first prove that they were Richard's responsible executors.

Friskeney, for A. and W., Richard's executors. Richard made a testament, which was proved, and by this testament administration was granted to them; and they administered after the testament

[1] See note 2 on opposite page.

[2] *Sc.* The Great Charters. See note p. 35 *supra.*

testament proue administreront mais le testament fust ars pur le comun arson qe vint en le chief de la vill et ceo voloms auerer.

How. et nous jugement desicom vous demandez ceste dette com executours et ne auez nul escripte en poyng pur affermer laccion en vos persones demandoms jugement si vous devez estre respondu.

Berr. si homme ordeine ses executours sanz ceo qe son testament seit mis en escrit et sa volunte seit qil administrassont com executours et la volunte seit proue devant le ordinary et puis administrent nentendez vous mie qil deivont estre respondu.

Berr.[1] la lettre del ordinary serreit del nul force en ceste courte de puis qe nul bref a eux fust issu pur certefier ceste courte sil fussont executours.

How. la lettre del Ordinary serreit en euidence.

Berr. ele ne serriet pur proue mais averement du pais serroit bon proue.

How. il demandent ceste dette com dette due a autre persone et il ne mistront nul escripte pur affermer laccion en lur persones a demander ceste dette jugement.

Berr.[2] en ceo cas suffist pur title dauerer pur pais qe eus administreront com executours et ceo vous proefs qe si homme demandast vers eux com vers executours et il il (*sic*) vousissont dedire lexecutour si serroit laverement receivable de courte qil administront et pur tant serront il lies a respondre com executours jugement par la ou il demandont si aueront il mesme lauantage de prouer qil sont executours par quoi il deviont estre respondu.

Spig. jeo le vous proefs qe executours ne deivont estre respondu sans escripte Car executour nest fors com attorne ne mais attorne ne serra mie respondu a nul averement du pais qil est attorne ergo ne executour ne serroit respondu sanz escripte.

Hengh. il couent qe attorne seit fet par bref en deuant celui qe porte record mais executour pouereit estre faitz aloustiel ala volunte le testatour deuant veisins et sil administrist apres assez suffit dauerer etc. Et de autre part lattorne ne put fere attorne de surer pur eus qui executours il sont.

Spig. ieo vous responde a votre reson par la ou vous dites ausint com home auereit auerement vers eux deladministracioun de lier eux a respondre ausint aueront il auerement de la administracioun vers autres afere eus respondre ieo vous proefs qe noun qe si homme face autre

[1] There is probably an error in the attribution of this observation. [2] This speech seems to be wrongly attributed. The argument is probably *Friskeney's*.

was proved; but the testament was burnt in the general fire which broke out in the chief part of the town. And that we will aver.

Howard. And we ask for judgment whether, since you claim this debt as executors and have no writing to proffer establishing in your persons a right of action, you ought to be answered.

Bereford C.J. If a man appoint executors, even though he do not reduce his testament to writing, and it be his will that they should administer as executors, and his will be proved before the Ordinary, and they then administer, do you not think that they ought to be answered?

Bereford C.J. The Ordinary's letter would have no authority in this Court since no letter was granted to them to certify this Court that they were executors.

Howard. The Ordinary's letter would be evidence of that.

Bereford C.J. It would not serve as a proof; but averment by a jury would be a sufficient proof.

Howard. They are claiming this debt as a debt due to another person, and they proffer no writing to show that any right of action to claim this debt is vested in their persons. Judgment.

Bereford C.J. In the circumstances they will get a sufficient title by an averment by a jury that they administered as executors. And that I will make plain to you, for if a man should sue them as executors and they wanted to deny the executorship, the Court would accept an averment as proof that they had administered, and to that extent they would be bound to answer as executors. So in the case where they are suing they ought to have the same facility of proving that they are executors, and therefore they ought to be answered.

Spigurnel. I will show you that executors ought not to be answered unless they show some writing; for an executor is only an attorney. But no averment by a jury that a man is an attorney will entitle him to be answered. Therefore no executor ought to be answered unless he show a writing.

Hengham. An attorney must be appointed by a writ before an officer of record, but an executor may be appointed at the will of the testator in his house in the presence of his neighbours; and if one so appointed afterwards administer, it is sufficient to aver etc. And further than this, an attorney cannot appoint an attorney to sue in the names of those whose executor he is.

Spigurnel. I will answer your argument. You say that as a man might have an averment of administration against them so as to bind them to answer, so they should be entitled to make an averment of administration as against others to make such others answer. I will show you that this is not so; for though a man appoint another to

executour de son testament par tant nest il pas tenu de estre son executour sil ne voille de bone volunte de quel fet homme auantage puit vers lui auer le quel auantage il ne deit auer vers autres.

Berr. vous supposez par votre dit qe administracioun soulement lui deit lier a respondre mais vous nous dioms qe si vous voillez lier homme a respondre de autri dette il couent qe vous lui liez com executour et nient com administrator sanz dire qil est executour vous ne serret nient respondu dont vous supposez par vostre response et par tant qil administrist qe par tant serroit il lie a respondre mais qil est executour et puis administrist ceus deus choses il couent auer pur fere lui respondre par quoi lauerement est de courte receiuable ausi bien la ou il sont demandantz com la ou il sont defendantz.

How. cesti qe administre fest a son damage et se mesme charge par quoi a son damage homme auereit lauerement vers lui mais il nauereit mie mesme lauantage vers autres.

Berr. homme ne sceet le quel administracioun deit torner a son damage ou non et dautre part si administracioun deit torner a damage par une voie reson serreit qe par autre voie lui tornereit a profist quia cui est honus eius est amolumentum [*sic*] et e contra.

How. les ordinaries pur ceo qil administront en cas ou homme deuie intestat par tant deuiont il respondre de les dettes le mort mais il ne unt nule accion a demander dette et fallit sicut ille qui habet onus defunctionis non habeat emolumentum accionis.

Hert. nous voloms auerer qil furent les executours R. et qe le testament fust ars et qe eus avant qe le testament fust ars administrassent et apres et veiez cy lur fet pur quoi il sont liez et obligez ala dette et desicom il ne voillent cel averement receyure ne a lur fet demesne respondre jugement de eus com de noun defenduz.

Spig. nous auoms dit qe vous ne deuez estre respondez sanz escripte et vous tendet un auerement qil deiuont estre respondu qe chiet en discrecion des Justices et si nos seignours agard nous respondroms assez.

Berr. il boutent avant vostre fet et tendont un auerement le quel vous refusez et pur ceo entendent il qe vous seiez noun defenduz.

Hunt. home put auer administracion et si ne deit il mie estre

be the executor of his testament, this latter is not thereby obliged to become his executor if he be not so willing; wherefore it follows that others might have advantages against him which he could not have against them.

Bereford C.J. What you say supposes that mere administration binds a man to answer, but let me tell you that if you want to bind a man to answer for another's debts you must bind him as executor and not as administrator. Unless you say that he is executor you will not be answered, as you seem, by your answer, to suppose you would be. It is the fact of his having administered that binds him to answer; but it is necessary, if you are to force him to answer, that he have these two qualifications, that he be an executor, and that he have subsequently administered. Consequently an averment [by such an administering executor] is equally receivable by the Court whether he be demandant or defendant.

Howard. He that administers administers at his own peril and incurs responsibility. It follows, then, that a man may have an averment alleging liability against him, while the administrator would have no such advantage against others.

Bereford C.J. A man does not know whether an administration is going to result in his endamagement or not. And further, if an administration results in his endamagement in one way, it is only reasonable that it should be to his advantage in another: for he that hath the burden hath likewise the profit, and *vice versa*.

Howard. Where a man dies intestate the ordinaries administer, and are consequently answerable for the debts of the deceased, but they cannot sue for debts due to him; and so it does not hold that he that hath the burden of the deceased's estate hath likewise the privilege of bringing action.

Hartlepool. We will aver that they are R.'s executors and that the will was burnt, and that they administered before the will was burnt and afterwards. And see here their deed by which they are tied and bound to the debt. And since they will neither accept our averment nor answer to their own deed, judgment of them as offering no defence.

Spigurnel. We have said that you ought not to be answered without showing some writing, and you tender an averment [and claim that thereupon] you ought to be answered. This lies in the discretion of the Justices, and, if my lords so rule, we will give you answer enough.

Bereford C.J. They proffer your deed and tender an averment, which you refuse; and so they say that you put in no defence.

Hunt. A man may have administration, and yet it does not

respondu posoms qe seinte Eglise eit grante administracioun a un homme sanz la volunte le testatour quia cel administrist nauereit il mie accion pur le mort pur quoi dauerer qe eux administrirent nest pas proue qil sont respounable estre ceo homme ne put estre partie a nul auerement sil ne respounde et eit poair a pleider et desicom il ne mostre nul escripte qe tesmoigne lur poair a pleder nentendoms pas qil puissent estre partie a nul auerement.

Berr. vostre excepcion est a fere eux nient respounable et a eux est a mostre lur [dreit] pur estre respondu et ceo pount il fere en ceo cas par auerement ausi com par escripte et ceo proefs Car testament nest pas la volunte etc. einz testmoynance de la volunte dont si issi fust qe nule volunte seit mis en escripte uncore put sa volunte estre suy et conu par pais par qi ele put estre autrement proue qe par escript pur quoi nous entendoms qe lauerement suffist.

Et postea concordati sunt etc.

[1]ANON. *v.* ANON.

Dette demande par taill enseale ou il ne [2]prie mie[3] auerer soun ley encountre la taille.

Un homme porta bref de dette vers un homme et sa femme dont la femme se avoit oblige tant com ele fust sole par une taill enseale le homme et sa femme par J. de B. lur attorne agageront la lei en countre la taille.

Cant. est ceo vostre fet ou noun.

Migg. a ceo navoms mestier a respoundre qil pout mesme auer fet un tiel fet mult bien et aueroms en cel fut ou meins ou plus a son volunte.[4]

Berr. quoi dites vous de vostre seal qest pendant.

Migg. si ieo meis moun seal a un escrowet sanz lettre escruire le mettre du seal ne me chargereit pas pur quoi il nestut pas respondre a ceo seal.

Huy. quidez qe encountre vostre fet demesne a la lei auener.

Migg. si vous agardez qe nous naueroms mie la lei nous respondroms assez.

Berr. deuoms nous agarder si vous deuez respondre ou noun mais une chose vous dy qe si vous demorez en jugement sur ceo le qel vous auerez la lei ou ne mie vous ne resceterez mie a autre response si jugement passe en countre vous.

[1] Reported by *aa* only.

[2–3] The marginal note is faded, and the reading of these two words is uncertain.

[4] The text seems corrupt here, but the sense is probably as given on the opposite page.

follow that he ought to be answered. Take the case of Holy Church granting administration to one whom the deceased had not named. Such an one could not bring an action on behalf of the deceased simply by reason that he had administered. So to aver that these people have administered is no proof that they ought to be answered. Further than this, a man cannot be party to any averment unless he put in an answer or have something to plead ; and since he shows no writing that discloses any defence we do not see how he can be party to any averment.

Bereford C.J. The aim of your exception is to show that they are not entitled to an answer. The aim of theirs is to show that they are duly authorized ; which, in the circumstances, they can prove by averment as well as by a writing. And that follows from the fact that a testament is not the will etc. but the evidence of the will ; for if it had so been that the will had not been put into writing, yet the will might have been the subject of action and of recognition by a jury, before whom it could have been proved otherwise than by a writing. Wherefore we are of opinion that an averment is sufficient.

And afterwards the parties came to a settlement.

ANON. *v.* ANON.

Debt demanded by a sealed tally where the defendant does not pray to wage his law against the tally.

A man brought a writ of debt against a man and his wife. The wife, while she was sole, had bound herself by a sealed tally. The man and his wife, by J. of B., their attorney, waged their law against the tally.

Cambridge. Is this your deed or not ?

Miggeley. We are not bound to answer that. The demandant may very easily have made this deed himself, and have made it more or less as he chose.

Bereford C.J. What do you say as to your seal attached to it ?

Miggeley. If I put my seal to an escrowet and write no letter, the fact of putting my seal there does not charge me. Therefore we are under no obligation to answer to this seal.

Huy. Do you suppose that you are going to get to your law in the teeth of your own deed ?

Miggeley. If the court rule that we cannot have our law we will give you answer enough.

Bereford C.J. [If you ask us,] we must rule whether you ought to answer or no ; but I tell you one thing, that if you take our ruling upon the question of whether you shall get to your law or not, and that ruling be against you, you will not be allowed to fall back upon any other answer.

Migg. demanda loye du fet et auoit et puis demanda la vewe et habuit et puis dit nient nostre fet prest etc. et lautre le reuerse.

Berr. ceo moi paie bien qe vous auez pris tiele issue en descharge de nous qe nous vous chaceroms iammes a cel auerement Car il poit auer dit rien ne lui deit prest etc. et issi auer este a paie secus com si ceo fust escrit qe taill nest nient purement fet qest escrit qar la lettre put estre ouste et escrit autre foith et autrement qele ne fust auant a la volunte celui qe lad en garde sanz ceo qe homme laperceivereit et issi nest il pas descrit.

[1]RIPPLE *v.* RIPPLE.

Dette. Laurence Raple fust tenu en une dette a Edmund de Raple Edmund deuia fist ses executours Maud sa femme et lauantdit L. de Raples lur testament proue et furent resceu com executours deuant Ordinary et administrarent Maud deuia et fist ses executours Thomas de Malverton et Mabille sa femme et Nicholas de Aluertone vindrent les auantditz Thomas Mabille et Nicholas ensemblement ofue Laurence de Raples coexecutour Maud et porterent bref de dette vers lauant dit Laurence de R. et fust le bref tiel Comandez a Laurence de R. qe etc. rende a Thomas de Maluertone et Maud sa femme et a Nicholas de Maluertone executours du testament etc. et a Laurence le fitz Rauf et fust le cas tiel celui Laurence fust conu par un noun et lautre Sauer Laurence de Raples et Laurence le fitz Rauf et fust un mesme persone et fust pleintif et defendant et pur ceo lui fist nomer L. le fitz R. qant a ceo qe il fust pleintif et puis Thomas de Maluertone et M. sa femme et Nicholas de Maluertone les executours Maud ensemblement ofue Laurence [2]et M. executours Maud[3] conteront vers Laurence de Raples tiel Counte Ceo vous mustre T. et M. sa femme et Nicholas (*sic*) le fitz Rauf coexecutours Maud qe seuere est par agarde et point ne suyt qe cy sount qe Laurence de R. qe illocques est etc.

Hert. mostre qe vous estes executours et qe vous pussez com executours demander et mostre qe Maud et Laurence le fitz Rauf seiont executours celui qi executours il diont estre.

Scrop. veiez cy le testament qe testmoigne.

[1] Reported by *aa* only, but is printed in the old edition, p. 101 (Pasch. 4 Edward II). [2–3] *Sic.* The reading should obviously be '*executor Edmund.*'

Miggeley demanded *oyer* of the deed and had it. Afterwards he demanded a view and had it; and later he said:—'Not our deed. Ready etc.'; and the other side joined issue.

Bereford C.J. I am very glad that you have taken this issue without throwing any responsibility upon us, for we shall never force you to make such an averment. For the defendants might have said:—'We owe him naught. Ready etc.,' and so have gone to a jury. It is not the same here as if this had been a writing, for a tally is not a pure deed as is a writing; for what has been inscribed [on a tally] can be shaved off and something different from what was there before can then be put in its place at the will of the custodian of the tally, without any one being able to detect it, which is not the case with a writing.

RIPPLE *v.* RIPPLE.

Debt.

Lawrence Ripple was bound in a debt to Edmund of Ripple. Edmund died. He appointed his wife Matilda and the aforesaid L. of Ripple to be his executors. These proved the testament and were admitted as executors before the Ordinary, and they administered. Matilda died. She appointed Thomas of Malverton and Mabel his wife and Nicholas of Alverton to be her executors. The aforesaid Thomas, Mabel and Nicholas came, together with Lawrence of Ripple that was co-executor with Maud, and brought a writ of debt against the aforesaid Lawrence of R.; and the writ ran after this wise:—'Command Lawrence of R. that etc. he render to Thomas of Malverton and Maud his wife and to Nicholas of Malverton executors of the testament etc. and to Lawrence the son of Ralph.' Now the fact was that that same Lawrence was known by both of two names, to wit, Lawrence of Ripple and Lawrence the son of Ralph, who were both one and the same person, and he was plaintiff and defendant; and for this reason he was, as plaintiff, described as L. the son of R. And afterwards Thomas of Malverton and M. his wife and Nicholas of Malverton, that were Maud's executors, together with Lawrence that was Edmund's executor, counted this count following against Lawrence of Ripple:—'By this T. and M. his wife and Lawrence the son of Ralph, who are here, the co-executors of Maud, who has been severed by judgment and does not sue, show you that Lawrence of R. who is there etc.'

Hartlepool. Show us that you are executors and that you can sue as executors; and show us that Maud and Lawrence the son of Ralph are the executors of him whose executors they say that they are.

Scrope. See here the testament which is evidence of it.

Et mist avant deux testamentz lun fust le testament Maud qe testmoigne T. de Maluertone et Maud sa femme et Nicholas de Maluertone estre les executours lauantdit Maud et lautre testament Edmund de R. qe testmoigne Maud et Laurence estre les executours Edmund et mesme celui L. fust nome en le testament Laurence de R. et en le bref Laurence le fitz Rauf quant a ceo qil fust pleintif.

Toud. Sire Laurence de R. est executour nome en le testament et en le bref il ny ad nul Laurence de R. nome qe est pleintif einz est Laurence le fitz Rauf qe nest pas executour par le testament iugement etc.

Hengh. ceo est mesme la persone.

Hert. il y ad Laurence de Raples en le testament nome executour a qi accion est reserue si accion cy soit et il diont en lur bref commandez a L. de R. qe etc. rende a Laurence le fitz Rauf qe nest pas nome executour en le testament iugement.

Scrop. Laurence est mesme la persone qest pleintif et defendant et si nous lui nomons par autre surnoun pur ceo rien suyt il mie qe nostre bref se abatereit qe nous veioms qe homme purra vocher lui mesne a garrantir par autre surnoun et uncore nest mie le vocher abatable ausi semble il de ceste parte.

Hengh. grante duresse serroit si nos perdisoms nostre (*sic*) par tant etc. del hure qe nous voloms auerer qe ceo est mesme la persone.

Toud. si vous ussez dit Comandez a L. le fitz Rauf qe etc. rende a Laurence de Raples la ou il dit le reuerse Comandez a Laurence de Raples qe etc. rende a Laurence le fitz Rauf vous ussez bien dit.

Et il furent assentantz Berr. Scrop. Staunt justices et puis dit

Berr. priez congie de quere meillour bref et pur ceoqe vous estes executours la courte vous serra gracious et fauorable.

Hengh. issit demparler et reuint et dit qil demoreiont en lur agards.

Et furent aiornez as utasues de la Trinite a quel iour le pleintif fuist noun suy pur ceoqe il doteront le iugement etc.

And he tendered two testaments : the one of which was the testament of Maud which testified that T. of Malverton and Maud his wife and Nicholas of Malverton were the executors of the aforesaid Maud ; and the other testament, which was the testament of Edmund of R., testified that Maud and Lawrence were the executors of Edmund. And this same Lawrence was named Lawrence of R. in the will, and in the writ, in his capacity of plaintiff, Lawrence the son of Ralph.

Toudeby. Sir, Lawrence of R. is the executor that is named in the testament, while there is no plaintiff named Lawrence of R. in the writ. But in the writ there is named one Lawrence the son of Ralph that is not an executor appointed by the testament. Judgment etc.

Hengham. It is the same person.

Hartlepool. Lawrence of Ripple is named executor in the testament, and to him right of action is reserved if action be brought here ; but in their writ they say :—' Command L. of R. that etc. he render to Lawrence the son of Ralph,' a person who is not named an executor in the testament. Judgment.

Scrope. This same Lawrence is both plaintiff and defendant ; and it by no means follows that our writ is abated by the fact that we have called him by different surnames, for we see men vouching themselves to warranty under another name, and that does not abate their voucher. So, I submit, it is here.

Hengham. It will be very hard if we lose our [right of action] because etc. since we are ready to aver that the two Lawrences are the same person.

Toudeby. If you had said :—' Command L. the son of Ralph that etc. he render to Lawrence of Ripple ' ; instead of saying just the reverse :—' Command Lawrence of Ripple that etc. he render to Lawrence the son of Ralph,' you would have said correctly.

And to this Bereford C.J. and Scrope and Staunton JJ. assented.

And afterwards Bereford C.J. said :—Pray leave to apply for a better writ. And, because you are executors, the Court will be gracious and favourable to you.

Hengham went out to imparl and returned and said that they would abide the judgment of the court.

And they were adjourned till the octaves of the Trinity, upon which day the plaintiffs were nonsuited because they feared what the judgment might be.

DECEIT.

[1]MATHEUS OFHEYNE *v.* JOHANNES DE STABELGATE.

[2]I.

De decepcione.

Preceptum fuit vicecomiti quod cum Johannes[3] de Stabelgate[4] nuper &c in curia hic falso & in decepcione curie ejusdem[5] recuperasset seisinam suam versus magistrum Matheum[6] Ofierne[7] de .j. tofto cum pertinentiis in suburbio Cantuarie per defaltam [8]ipsius magistri[9] Mathei cum idem magister Matheus nunquam summonitus fuit essendus[10] hic ad respondendum predicto Johanni [11]de placito quod reddat[12] predictum toftum[13] cum pertinentiis nec idem toftum unquam[14] captum fuit in manu domini regis ob aliquam defaltam ipsius magistri Mathei seu idem Matheus secundo summonitus fuit prout moris est &c venire faceret hic ad hunc diem scilicet die Lune[15] proxima post commemoracionem animarum Ricardum [16]de Sevenok[17] & Alexandrum Bon primos summonitores per quos mandaverunt justiciarii hic quod predictus Matheus summonitus fuerit quod esset coram justiciariis hic ad respondendum predicto Johanni de predicto placito & [18]Willelmum Tolong[19] Thomam Biene[20] Johannem Hade[21] & Henricum de Withele[22] per quorum visus mandaverunt justiciarii hic die Mercurii proximo ante quindenam sancti Michaelis proximo preteritam[23] quod predictum toftum captum fuit in manu domini regis & Robertum Blakelok & Henricum Michel[24] secundos summonitores per quos[25] mandaverunt prefatis[26] (*sic*) Justiciarii hic quod predictus magister Matheus summonitus fuerit essendi (*sic*) hic ad hunc diem ad respondendum predicto Johanni tam de principali placito quam de predicta defalta ad certiorandum [27]predictis justiciariis[27] hic una cum ipso vicecomite vel suo[28] subvicecomite de summonicione & capcione predictis & quod haberet corpus predicti Johannis hic[29] ad hunc diem ad respondendum tam domino regi quam predicto magistro Matheo de predictis falsitate & decepcione &c & interim in manu domini regis caperet &c & modo venerunt predicti magister Matheus & Johannes & predicti Ricardus Sevenok & Alexander Bon primi summonitores

[1] Reported by *α*, *γ*, *δ*, *ϵ*. Names of parties from E.R. [2] Text of (I) from *γ* collated with *δ* and *ϵ* and E.R. [3] omes (*sic*) *δ*. [4] Stapilgate *δ*; Stapelgate *ϵ*; Stablegate E.R. [5] *δ omits*. [6] Walterum *ϵ*. [7] de C. *δ*; Ofheyne E.R. [8–9] cuiusdam *δ*. [10] essendi *ϵ*, E.R. [11–13] de predicto tofto *δ*. [12] reddere *ϵ*. [14] nunquam *δ*. [15] Jovis *δ*. [16–17] Seuekok *δ*; de Seuebrok *ϵ*. [18–22] B. &c. *δ*. [19] Colyng *ϵ*. [20] Bialve *ϵ*; Deane E.R. [21] Bode *ϵ*. [22] Wither *ϵ*; Wythelere E.R. [23] futuram *δ*. [24] Mikelhal *ϵ*. [25] quod *δ*. [26] *δ omits*; prefatis E.R. [27–27] predictos Justiciarios *δ*. [28] *δ omits*. [29] *from ϵ and* E.R.

DECEIT.

OFHEYNE [1] *v.* STAPLEGATE.

I.

Whereas John of Staplegate lately etc. here and in this Court did falsely and by deceiving the said Court recover his seisin of a toft with the appur tenances thereof in the suburb of Canterbury against Master Matthew Ofierne through the default of the said Master Matthew, such default happening by reason of his never having been summoned here to answer the aforesaid John's plea that he should render to him the aforesaid toft together with the appurtenances thereof; and whereas in fact the said toft had never been taken into the king's hand by reason of any default of the said Master Matthew, and whereas the said Matthew had not been summoned a second time according to custom etc., command was given to the Sheriff that he should have here on this day, to wit the Monday next after the Commemoration of Souls, Richard of Sevenoaks and Alexander Bone, the first summoners by whom the Justices here ordered the aforesaid Matthew to be summoned to appear before the Justices here to answer the aforesaid John touching his aforesaid plea; and William Tolong, Thomas Beane, John Hade and Henry Wittley upon whose view the Justices here reported upon the Wednesday immediately preceding the quindene of St. Michael last past that the aforesaid toft had been taken into the King's hand, and Robert Blacklock and Henry Michael, the second summoners, by whom the aforesaid Justices here had ordered that the aforesaid Master Matthew should be summoned to appear here on this day to answer the aforesaid John touching both the principal plea and also the aforesaid default, together with the Sheriff himself or his under-Sheriff, that they might certify the Justices here of the summons and caption aforesaid, and that [the Sheriff] should have here on this day the body of the aforesaid John to answer as well our Lord the King as the aforesaid Master Matthew touching the aforesaid fraud and deception etc., and in the meantime should take into the King's hand etc. And now come the aforesaid Master Matthew and John; and the aforesaid Richard Sevenoaks and Alexander Bone, the first

Deceit.

[1] The Eyre Roll denominates the plaintiff as Master Matthew Ofheyne. One of the Year Books calls him Master Matthew the Goldsmith (*lorfeure*). The question arises whether *Ofheyne* be a corruption of *orfeure*, or *orfeure* of *Ofheyne*. The Roll is, *prima facie*, more likely to be correct than the report, and moreover it is not usual to give the prefix of *magister* to a goldsmith, though, of course, this particular Matthew might be a goldsmith and something more.

&c venerunt & iidem summonitores jurati & separatim examinati per justiciarios [1]domini regis[2] dicunt super sacramentum suum quod ipsi nunquam summonuerunt predictum magistrum Matheum quod esset coram justiciariis hic ad respondendum predicto Johanni de predicto placito. Ideo consideratum est quod magister Matheus rehabeat inde seisinam suam de predicto tofto cum pertinentiis & predictus Johannes committatur gaole &c[3].

Et Nota qe les justices ne examinerent point les pernours qar qaunt la primer sumonse ne fust nient fete tute le proces apres est nul [4]& feust dit qe si la primer ust este bone & la prise & la seconde sumonse & il usent trove qe un des somenors nust ew nule terre le proces ust este nul qar ley de terre veut qe somenors soient terretenantz Set tamen de hoc non sum certus[5].

Note from the Eyre Roll.

The record of the original case upon which Master Ofheyne (or Ofherne) brought his action for Deceit is as follows :—

Johannes de Stablegate optulit se iiij. die versus Magistrum Matheum Ofherne de placito unius tofti cum pertinenciis in suburbio Cantuarie quod clamat ut jus etc. Et ipse non venit. Et alias fecit defaltas hic post quam summonitus etc. Ita quod tunc preceptum fuit vicecomiti quod caperet predictum toftum in manum domini Regis etc. Et diem etc. Et quod summoneret eum quod esset hic die Veneris proximo post festum Sancti Jacobi apostoli etc. Ad quem diem vicecomes nichil inde fecit set testabatur quod preceperat Ballivis libertatis Cantuarie qui nichil etc.

[6]II.

Bref de desceite ou les primers somens & les pernours et les secund somonours et touz vindrent et les deux primers somonours furent examinez qe diseiont qil ne fesoient vnqes somens al tenaunt par quei il recoueri saunz examinement des autres.

Mestre Mathu lorfeuere porta soun bref de desceite uers Johan de Stapelgate et dit qil auoit fausement et en desceite de la cour etc. suy uers lui et rescouery certeins tenemenz en la suburbe de Cauntebirs la ou lauauntdit Mathu ne fut vnqes somons selom lei de terre a respoundre de ceo en la court le Roy ne la terre ne fut unqes pris en la main le Roy

[1–2] *δ*, *ε omit.* dimidiam marcam. [3] E.R. *adds* Postea predictus Johannes fecit finem per [4–5] pur quei etc. *δ*. [6] Text of (II) from *α*.

summoners etc. come, and these same summoners, having been sworn and separately examined by the Justices of our Lord the King, say upon their oath that they never summoned the aforesaid Master Matthew to appear before the Justices here to answer the aforesaid John touching the aforesaid plea. So judgment was given that Master Matthew recover his seisin of the aforesaid toft with its appurtenances, and that the aforesaid John be committed to gaol etc.

And you shall note that the Justices did not examine the pernours, because all the subsequent process was rendered null by non-service of the first summons; and it was said that even if the first summons and the seizure [into the King's hand] and the second summons had been duly effected, yet if it had been found that one of the summoners was not possessed of any land, the process would have been of non-effect, for the law of the land requires that the summoners shall be tenants of land.[1] But of this I am not sure.

Note from the Eyre Roll—*continued.*

Ita quod tunc preceptum fuit vicecomiti quod non omitteret propter predictam libertatem quin caperet predictum toftum in manum domini Regis etc. Et diem etc. Et quod summoneret eum quod esset hic ad hunc diem scilicet die Mercurii proximo ante quindenam Sancti Michaelis etc. Et similiter quod vicecomes haberet hic corpora Ballivorum etc. Et vicecomes modo testatur quod ceperat predictum Toftum in manum domini Regis die Martis proximo post festum Sancte fidis virginis per visum Willelmi Tolong Thome Beane Johannis Haste et Henrici le Wythelere. Et quod summonitus fuit etc. per Robertum Blakelok et Henricum Michil etc. Ideo consideratum est quod predictus Johannes recuperet inde seisinam suam versus eum per defaltam etc. Et Magister Matheus in misericordia etc.[2]

II.

Writ of deceit where the first summoners and the pernours and the second summoners and all came; and the two first summoners, being examined, said that they never summoned the tenant. Whereupon the tenant recovered, without the others being examined.

Master Matthew the goldsmith brought his writ of deceit against John of Staplegate, and said that John had falsely and in deceit of the Court etc. brought action against him and had recovered certain tenements in the suburb of Canterbury, though the aforesaid Matthew had never been summoned in accordance with the law of the land to make answer touching such matter in the King's Court; nor had the land

[1] See p. 111 *infra*. [2] *m.* 44.

ne il altrefoiz somounz a respoundre de cele defaute etc. par quei comande fut vicounte qil feist vener les somenours et les pernours qe furent endossez en le bref original et les secund somenours qe furent enroules quia nullum captum est preceptum. Et qil feit venir mesme celui Johan a respoundre de cele desceite et qil mesmes ou soun souz viscounte hy fuissent a mesme le jour a certefier de la prise et de la somons et qil preissent la terre en la main le Roi et qil respoundissent des issues en le meen temps au Roi. Au quel jour vindrent les primers jureurs furent jurez et seueralment examinez qe disoient qil ne fut vnqes semounz et les veours et les pernours ne furent vnqes examinez Kar assez fut la desceite atteint qil ne fut pas somounz et tut le proces anenty pur quei fut agarde qe Mathu reeut sa seisine et Johan a la prisone. Et quidam furent en oppinioun qil eust tiel rescouerir uers le vicounte. Et postea idem Johannes fecit finem suum pro xl.*s.*

DOWER.

[1]JOHANNA GOSEHALLE *v.* JACOBUM DE COBEHAM.

[2]I.

De visu concesso ubi intravit post mortem viri virtute recognicionis cujusdam debiti.

De Dote. Margaret[3] qi feust la femme Jon de Gosehale porta bref de dower[4] vers mestre[5] James de Cobeham et demanda la terce partie [6]del manoir de Goshale.[6]

Toudeby[7] demanda[8] vewe.

Stonor[9] la vewe ne devez avoir qar[10] vous mesme entrastes par nostre baron &c.[11]

[1] Reported by *aa*, *β*, *γ*, *γγ*, *δ*, *ϵ*, *ζ*, *κκ*, λ. Names of parties from E.R. [2] Text of (I) from *γ* collated with *ϵ*, *κκ*, λ. Head note from *ϵ*. This note is incorrect, as *view* was refused, though *aid* was granted. [3] Maud λ; Johanna E.R. [4] doeire *ϵ*. [5] λ *omits*. [6–6] de certein tenemenz λ. [7] Mestre J. *κκ*; *West* defendit et λ. [8] *from ϵ and* λ. [9] *Toudebi κκ*. [10] *κκ adds* statute vous ouste qe. From this point λ is not collatable with *γ*. See Report (II) *infra*. [11] The report in *γγ* ends here. From this point *κκ* is not collatable with *γ*. The rest of *κκ* reads as follows :—

Westcote. Sire nous vous dioms qe Johan de Gosehale esteit tenuz a mestre James de C. en iij. C. mars par forme de statut marchaunt a paier a certein iour et einz ce iour si bailla il maner a un G. et a A. sa femme et a G. lour fiz a terme de lour iij. vies. G. le baron sei lessa morir et J. de Gosehalle sei lessa morir auaunt le iour Mestre J. suy tanqe les tenemenz furent a lui liueres par forme del statut et issint entra il apres la mort Johan de Gosehalle et nient par lui jugement si nous ne devoms la veue auer.

Spigurnel. Vous entrastes par my la conisance Johan et Johan cause de sa conisance ergo par Johan.

ever been taken into the King's hand, nor had he, Matthew, been summoned a second time by reason of his default etc. Whereupon command was laid upon the Sheriff that he bring up the summoners and the pernors whose names were endorsed upon the original writ, and the second summoners whose names were writ in the roll, seeing that no caption had been effected; and further that he should bring up that same John to answer for this deceit, and that he himself or his under-Sheriff should be here on the same day to certify as to the caption and the summons, and that he should seize the land into the King's hand, and should be answerable to the King for the mesne issues. Upon which day came the first summoners, who, being sworn and severally examined, said that they had never summoned [Matthew], and the viewers and the pernours were not examined, for the deceit was sufficiently found when it was proved that Matthew had not been summoned; and all the process was rendered null. Whereupon judgment was given that Matthew recover his seisin, and that John go to prison. And some there were that thought he could have recovered against the Sheriff. And afterwards this same John made his fine for forty shillings.

DOWER.

GOSSHALL *v.* COBHAM.

I.

View[1] granted where the tenant entered after the husband's death under the recognition of a debt.

Dower. Margaret that was wife of John of Gosshall brought a writ of dower against Master James of Cobham and demanded the third part of the manor of Gosshall.

Toudeby demanded view.

Stonore. View you ought not to have, for you entered by our husband etc.

[1] See note 2 on opposite page.

Westcote ceo ne poez dire qar nous entrames par jugement par vertue dune reconisaunce qe vostre baroun nous fist en statut marchaunt.

Toudeby ad idem vous ne poez nient dire qe nous entrames par vostre baron qar nous entrames apres sa mort [1]& non obstantibus rationibus predictis[1]

Hervi & Spigurnel agarderent qil nust pas la vewe & disent qe asez furent il entre par le baron qaunt il entrent par vertu de sa conisaunce.

Toudeby. Sire[2] Jon de Gosehale se obligea a nous en statut marchaunt & peus lessa le manoir [3]de Goshale[3] a Thomas Wrotham & Alice sa femme & a Geffrey lour fitz a terme de lour iij vies & vous dioms qe apres la mort Thomas de Wrotham nous siwimes executioun del statut vers Alice & G. issint qe les tenementz nous furent liverez a tenir en noun de fraunktenement taunt qe &c. & prioms eide de Alice & de G. saunz qeux nous ne pooms [4]des tenementz respondre.[4]

Stonor eide ne devez aver qar ceus de qi vous priez eide navent rien en les tenementz avant la reconisaunce ne longement apres.

Toudeby il covient qe nous eoms eide de ceus vers qeux nous avioms execucioun qar donqes poent eux vocher le heir Jon de Gosehale & essint peut la femme recoverir vers le vouche & issint[5] rien ne deperireit a nous pur nostre temps ne a eux vers qeux nous avioms execucioun mes

Heruy. Vous entrastes par la conisance Johan ergo par Johan respondez outre.

Westcote. Sire nous vous dioms qe Mestre James tient ceux tenemenz en noun de franc tenement tanqe etc. et issint nauoms pas tiel estat qe nous pussoms a sa demande respondre et A. et G. unt estat apres nostre temps a terme de lour vies et prioms eide.

Ston. Vous ne deuet eide auer qar nous demandoms nostre dower de temps J. nostre baron et lestat qe vous auet est par une conisance fait a nostre baroun et issint nostre accion et vostre estat tut par nostre baroun pur quei vous ne deuet de ceux qi estat est de pune tenz eide.

Toudebi. Veez quele duresse ensuereit si nous nussoms le eide si A. et G. fussent ore tenantz et vous portez cesti bref vers eux pussent voucher le heir Johan qi lour est tenu a garrantir et si vous recouerisset vers le heir Johan et ceux tendrent en fees et si nous dussoms respondre saunz eux issint perdrent eux lour voucher qe serroit com une dissiseine.

Heruy. Au tel cas fust veu en bank ou leide fust grante.

Spigurnel. Il nest pas cors de lei a graunter leide en bref de dower mes nepourkant nouels cas changent la lei quia dicitur in nouo casu nouum remedium est apponendum et grant duresse serreit deux perdre lour voucher et dautre part Mestre J. nad pas tiel estate qil pust estre partie a vostre recouerir qil nad estat fors a un certein temps tanqe la dette etc. et vostre recouerir est a tote vostre vie qest a noun certein qe pust estre xxx. aunz apres lestat Mestre J. passe solom la volunte dieu pur quoi il estut qil eit leide de A. et G. et queux pussent voucher le heir J. de G. qi pust estre partie a si haut recouerir.

Westcote graunta leide etc.

[1–1] &c. Mes nient contre esteauntz ces reisons ϵ. [2] ϵ *adds* nous vous dioms qe. [3–3] ϵ *omits.* [4–4] les tenementz rendre ϵ. [5] en tel manere ϵ.

Westcote. That you cannot say, for we entered after judgment given upon an acknowledgment made to us by your husband according to Statute Merchant.[1]

Toudeby, ad idem. You cannot say that we entered by your husband, for we entered after his death. Yet, notwithstanding the arguments aforesaid,

Staunton and Spigurnel JJ. refused them view, and said that entry by the husband's acknowledgment was legally entry by the husband.

Toudeby. Sir, John of Gosshall bound himself to us by Statute Merchant, and then leased the manor of Gosshall to Thomas Wrotham and to Alice his wife and to Geoffrey their son for the term of their three lives; and we tell you that, after the death of Thomas of Wrotham, we sued execution under the Statute against Alice and G. Whereupon the tenements were delivered to us to hold as freehold until etc., and we pray aid of Alice and of G., without whom we cannot answer for the tenements.

Stonore. Aid you ought not to have; for those of whom you pray aid had naught in the tenements before the acknowledgment, nor for long after.

Toudeby. It is fitting that we should have aid of those against whom we had execution, for they can then vouch John of Gosshall's heir, and so the wife can recover against the vouchee; and thereby we shall lose nothing during our term, neither will they against whom we had

[1] *Sc.* Statute of Merchants, 13 Edward I.

si nous neoms leide la femme recovera vers nous & apres nostre terme ceus qe avoient fraunktenement a terme de lour vyes perdereient la terce partie a tute la vie la femme saunz aver a la valeur del heir & ceo serroit duresse. Estre ceo nous ne pooms rendre vostre demande qar vous demandez ceus tenementz com vostre dower a tenir a terme de vostre vye & nous navoms rien [1]en ces tenementz[2] si noun une tenaunce en noun de fraunktenement tauntqe &c. & nostre terme passera par cas vivaunte la femme par qey nostre rendre ne se pout estendre[3] a si large estat com vous demandez &c.

Hervi ne doit il acounter ove ceus vers quex il avoit execucioun quasi diceret sic par qey il semble qe il doit de eux avoir eide & habuit auxilium &c.

Peus Alice & G. furent somons [4]et vyndrent[5] & se joynerent ove James & vocherent [6]a garantir[7] Henry fitz & heir Jon de Gosehale.

Spigurnel coment le vouchez vous le qel touz iij. joyntment ou Alice & Geffrey soulement.

Westcote ceo serra en vous qar il nous semble qe Alice & G. devient soulement vocher saunz James qar [8]il nad &c.[9] qe une tenaunce en noun de fraunktenement &c. & Alice & G. ount fraunktenement a terme de vye del lees Jon de Gosehale dount ceus qi sount parties a cel lees deivent soul vocher.

Spigurnel. Il covent qe vous vouchez touz iij. qar del houre qe vous estes joynt ove James vous iij. nestes qe une partie par qey il covent voucher touz ou respondre en chief touz.

Stonor ad idem si A. & G. vouchent soul saunz James le plee est discontinue vers James.

Westcote si tenant par la comune[10] ley Dengleterre soit emplede & prie[11] vouche le heir en eide le heir se pout joyndre & vocher soul [12]sic hic.[12]

Spigurnel [13]non est simile.[13]

Et peus vochent il en ceste forme. Alice & G. qi se joynent ove James vouchent Henry fitz & heir Jon de Gosehale.

Caunt. estoise le voucher.

Hervi il covent qil estoise qar vous ne avez rien a dire countre le voucher.

[14]& stetit vocacio.[14]

[1–2] *from* ϵ ; etc. γ. [3] atteyndre ϵ. [4–5] *from* ϵ. [6–7] *from* ϵ ; etc. γ. [8–9] James ne ad en ces tenemenz ϵ. [10] ϵ *omits.* [11] *vouche* originally written after *prie* but marked for erasure. [12–12] aussi par de cea ϵ. [13–13] nest pas semblable ϵ. [14–14] ϵ *omits.*

execution. But, if we do not have aid, the wife will recover against us ; and, after our term, those who had a freehold for the term of their lives will lose the third part during the whole of the wife's lifetime, without being able to recover the value from the heir, and that would be a hardship. Further than that, we cannot comply with your demand, seeing that you demand these tenements as your dower to hold for the term of your life, and that we have nothing in these same tenements beyond a freehold tenancy until etc. and it may be that our term will expire while the wife is still living ; wherefore our surrender cannot be extended to comprehend so large an estate as you are demanding etc.

Staunton J. Ought he not to account with those against whom he had execution ?—*seeming to infer that he thought Master James should have aid of Geoffrey and Alice, and he had it.*

Alice and Geoffrey were summoned afterwards and came and joined with James and vouched to warranty Henry, son and heir of John of Gosshall.

Spigurnel J. How are you going to vouch them ? All three of them jointly or only Alice and Geoffrey ?

Westcote. That will be for you to determine. It seems to us that Alice and Geoffrey only, without James, should vouch, for James has nothing but a freehold tenancy etc., and Alice and G. have a freehold for their lives by the lease of John of Gosshall ; and only those who are parties to that lease should vouch.

Spigurnel J. You ought to vouch all three, for since you have joined with James, the three of you form only one party, and so you ought to vouch all three, or answer in the name of all.

Stonore, ad idem. If A. and G. vouch alone and without James, then there is discontinuance as against James of James's plea.

Westcote. If a tenant by the common law of England be impleaded and pray to vouch the heir in aid, the heir may be joined and vouch alone. So here.

Spigurnel J. The two cases are not similar.

And then they vouched in this wise : Alice and G., who join themselves with James, vouch Henry, son and heir of John of Gosshall.

Cambridge. We allow the voucher.

Staunton J. You must needs allow it, for you have nothing to say against it.

And the voucher stood.

Note from the Eyre Roll.

The plea was :—Magister Jacobus venit et dicit quod predictus Johannes de Gosehalle de cujus dotacione etc. obligatus fuit eidem Jacobo in quadam summa pecunie per Statutum de Mercatoribus etc. qui quidem Johannes predicta tenementa unde predicta Johanna petit dotem etc. postea dedit et concessit quibusdam Thome de Wrotham et Alicie uxori ejus et Galfrido filio ejusdem Thome tenenda ad totam vitam predictorum Thome Alicie et Galfridi etc. Ita quod idem Jacobus post modo secutus fuit etc. de terris et tenementis que fuerunt in seisina predicti Johannis die recognicionis predicte habendis et tenendis ut librum tenementum etc. secundum formam Statuti etc. unde dicit quod ipse non habet inde nisi tenenciam tanquam de libero tenemento quousque predicta summa pecunie inde levata fuerit etc. Et dicit quod post predictum debitum levatum eadem tenementa reverti debent predictis Alicie et Galfrido eo quod predictus Thomas obiit tenenda ad terminum vite eorundem Alicie et Galfridi unde dicit quod non debet ei

[1] II.

Maud qi fut la femme Johan de Gosegray porta breve de dowere vers James de Cobham et demaunda la tierce partie de certeins tenemenz.

Westcote [2]defenda et[2] demaunda la vewe.

Stonore. [3]Vous ne deuez auer la vewe[3] car vous mesmes auez[4] mesmes ceux tenemenz du lees nostre baron[5] pur quoi [6]des tenemenz qil mesme vous lessa deuez estre mesconisance.[6]

Wescote. Nous auioms[7] ceux tenemenz hors de la seisine [8]Johan de Wrotham[9] et Alice sa femme et ne mie hors de la seisine [10]J. de Gosegray[10] jugement si nous ne deuoms la vewe auer.

Stonore. Johan de Gosegray se conust estre tenu a James de Cobham en lestatut issint qe apres cele conisance[11] il lessa ceux tenemenz a Johan de Wrotham et Alice sa femme a terme de lur .ij. vies pus[12] James tant auant[13] suist[14] qil auoit cele terre par vertue de la conisance Johan de Gosegray [15]jugement sil nauoit[16] de son lees et en ceo cas deuiont la vewe auer.

Toudebi. Uncores[17] ne sauoms si nous tenoms enterement les tenemenz qe furent en la seisine Johan de Gosegray[18] et par la vewe purroms estre ascerte pur quoi etc.[19]

[1] Text of (II) from *aa*, collated with $\gamma\gamma$, δ, λ, ζ. [2–2] ζ *omits.* [3–3] vous nel averetz δ. [4] aviez δ. [5] The report in $\gamma\gamma$ adds *ut scribitur alibi* and then stops. [6–6] de ceux qil vous lessa ne devez estre mesconissant δ; &c. ζ. [7] avons δ. [8] mainz λ. [8–9] Johan de Wortham ζ; Jon de Worham λ. [10–10] T. de E. δ; Jon de Goshale λ. [11] reconisance δ, ζ, λ. [12] dounc δ. [13] δ, λ, ζ *omit.* [14] δ *adds* par vertu del estatut. [15–19] par la vewe porroms estre ascerte &c. pur quei &c. δ. [16] λ *adds* asset. [17] λ *adds* nous. [18] Goshale λ.

Note from the Eyre Roll—*continued.*

inde sine predictis Alicia et Galfrido respondere etc. Et petit auxilium de ipsis in hac parte etc.

Alice and Geoffrey are summoned et jungunt se predicto Magistro Jacobo. Their plea is :—quod manerium illud fuit in seisina predicti Johannis de Gosehale qui illud concessit et demisit ipsis Alicie et Galfrido et cuidam Thome de Wrotham quondam viro ipsius Alicie qui obiit etc. tenenda ad totam vitam suam etc. unde dicunt quod iidem Alicia et Galfridus tenent predicta tenementa ad terminum vite sue ex dimissione predicti Johannis qui obligavit se et heredes suos ad Warrantizandum etc. et vocant inde ad Warrantizandum simul cum predicto Jacobo Henricum filium et heredem predicti Johannis.

Johanna subsequently fails to appear—*ipsa non venit*—and the Court gives judgment that ' predictus Magister Jacobus eat inde sine die et predicta Johanna et plegii sui de prosecutione in misericordia etc.'[1]

II.

Maud that was wife of John of Goosegrey brought a writ of dower against James of Cobham, and demanded the third part of certain tenements.

Westcote defended, and demanded view.

Stonore. You ought not to have view, for you hold these tenements by the lease of our husband ; and consequently you ought to be in no doubt as to the tenements which he leased to you.

Westcote. We have these tenements from the seisin of John of Wrotham and Alice his wife, and not from the seisin of John of Goosegrey. Judgment whether we ought not to have view.

Stonore. John of Goosegrey acknowledged, under the Statute,[2] that he was indebted to James of Cobham. Subsequently to that acknowledgment he leased these tenements to John of Wrotham and Alice his wife for the term of their two lives. Then James brought suit that the lands should be delivered to him by reason of John of Goosegrey's acknowledgment. Judgment whether he had not the lands by John of Goosegrey's lease, and, if so, whether he is entitled to view.

Toudeby. But we do not know whether we hold the whole of the tenements which were in the seisin of John of Goosegrey. By view we shall be able to certify ourselves. Wherefore etc.

[1] *m.* 12*d.*

[2] *Sc.* Statute of Merchants, 13 Edward I.

STAUNTONE. [1]Assez estes en ceo cas[1] entrer par le lees Johan de Gosegray[2] pur quoi etc.

Toudebi. Nous tenoms ceux[3] ausi come[4] franctenement come en estente les queus [5]recouerame[5] hors de la seisine[6] Johan de Wrotham et Alice sa femme qi unt[7] le franctenement purement a terme de vie sanz[8] qe[9] nous ne poums[10] ceuz tenemenz rendre[11] et prioms eid de eux.

Wescote.[12] Ele porte[13] cesti breve vers James de Cobham qi tient ceus tenemenz par estente come a terme tant qe la dette seit leue par estente et le franc tenement demourt en [14]les persones[14] J. et A. nient nomez en le breve jugement du breve.

[15]*Stonore.* Vous estes tenant du franc tenement et nostre demande ne se taille plus auant fors a recouerir franc tenement et issi tenant de nostre demande jugement si en cesti breve de dowere eid deuez auer et si nostre breve ne seit assez bon.[15]

Pass. Si la Court nous chacereit a respondre a Maud sanz eid auer et nous vousissoms rendre si rendreioms[16] plus haut estat qe nous auoms[17] qe[18] par la ou nous [19]nauoms si noun par estente si la qe[20] la dette seit paie[21] come a certain terme [22]et la femme demande[22] a terme de vie qe plus haut est [23]qe nest lestat qe nous auoms[23] donc si nous en ceo cas rendisoms a la femme dowere[24] Johan de Wrotham et Alice purrunt[25] auer lur recouerir par assise de nouel disseisine.

Stonore. Ore demand[26] jugement de sicome vous auez conu qe James a en [27]ceux tenemenz[27] franctenement et Mald [28]est[29] si noun[30] a recouerir franctenement[31] jugement si James deit eid auer.

[32]*Toudebi.* Ou deuendra a la garrantie Johan et Alice si ceste eid ne seit mie grante qe put estre qe Maud suruiuera a le terme James.[32]

SPIGURNEL. [33]James tient les tenemenz en noun de franc tenement[33] qest a terme certain qar par estente put homme estre ascerte du terme mes du terme de vostre vie ne sceet[34] nul homme [35]forsqe dieu[35] pur quoi cest en noun[36] certein et issint est le franc tenement qe vous demandez plus haut qe la tenance[37] James.

Stonore. Le breve par quoi lestente est liuere voet que homme

[1–1] estes vous asserte en ceo cas λ. [2] Goshale λ. [3] δ, λ, ζ *add* tenemenz. [4] δ, λ *add* de. [5–5] nous suymes δ, λ, ζ. [6] mein λ. [7] ount δ. [8] avant λ. [9] queux δ. [10] pomes δ. [10–11] ceste demande respondre δ, λ; respondre ζ. [12] λ *adds* ad idem. [12–13] Il portent δ; Maud porte ζ. [14–14] la personne λ. [15–15] δ, ζ, λ *omit.* [16] rendroms nous δ. [17] memes navoms δ. [17–24] λ *omits.* [18] et δ, ζ. [19–20] si noun par estat rien ne avoms tant com δ; navoms forsqe par estent tant com ζ. [21] leve ζ. [22–22] si demande la femme δ. [23–23] qe nous tenoms δ; qe nous navoms ζ. [24] λ *adds* ou. [25] δ, ζ, λ *add* devers nous. [26] demandoms nous δ. [27–27] ceste terre δ. [28–30] nest si soulement non δ. [29] nest ζ. [28–31] seist a recouerer franctenement soulement λ. [32–32] δ, ζ, λ *omit.* [33–33] nad si non qe franctenement en ces tenementz ζ. [34] seit, δ, ζ, λ. [35–35] fors soulement dieu, δ, λ; si dieu non ζ. [36] nul, δ, λ, ζ. [37] franctenement δ.

Staunton J. Your position is sufficiently approximate to an entry by the lease of John of Goosegrey. Wherefore etc.

Toudeby. We have an estate by extent in these lands as of freehold ; and we recovered them from out the seisin of John of Wrotham and Alice his wife, who have the pure freehold for the term of their lives, and without them we cannot render these tenements, and we pray aid of them.

Westcote. Maud brings this writ against James of Cobham who holds these tenements by extent until his debt be satisfied. The freehold resides in the persons of J. and A., who are not named in the writ. Judgment of the writ.

Stonore. You are tenant of the freehold. Our demand does not go further than to recover our freehold, and so you are tenant of our demand. Judgment whether you ought to have aid in this writ of dower, and whether our writ is not a good one.

Passeley. If the Court should force us to answer Maud without having aid, and we should have to render to her her demand, we should have to render a higher estate than we have got. All that we have is an estate by extent as of freehold as a guarantee for the payment of a debt that was payable upon a certain day ; and the wife is demanding an estate for life, which is a higher estate than the estate we have. Consequently, if in these circumstances we render dower to the wife, John of Wrotham and Alice will be able to recover by assize of novel disseisin.

Stonore. We now ask judgment, since you have admitted that James has a freehold in these tenements, and a freehold is all that Maud is seeking to recover. Judgment whether James ought to have aid.

Toudeby. What will become of the warranty of John and Alice if this aid be not granted, for it may be that Maud will live beyond James's term ?

Spigurnel J. James holds the tenements as of freehold for a certain term, for a man may be guaranteed a certain term by extent ; but the term of your life no man may certify, but God only, and therefore it is an uncertain term ; and so the freehold that you are claiming is a higher one than that which James has.

Stonore. The writ by which extent is granted says that a man is to

eit lestente des tenemenz [1]forspris vers les tenantz en dowere et enfant deinz age[2] pur quoi il[3] semble qe ele auera dowere [4]vers celui qi tient par estatut.[5]

[6]Spigurnel. La ou lestente est sui le bref voet qe homme ne eit mie lestatut[7] vers femme tenant en dower ne vers celi qest deinz age pur qei ceo ne proue pas qe femme auera [8]soun bref de[8] dower vers celi qe tent par estatut.[9]

Toudebi. Ut supra [10]nous ne pouoms vocher qe[10] si nous ussoms eu les tenemenz [11]par lestente[11] hors de la seisine[12] Johan de Gosegray [13]donqe purrioms auer vocher[13] mais ore gist le vocher en la bouche Johan de Wrotham et Alice[14] et si nous ne ussoms eid de eus [15]nous perdroms[15] nostre vocher.

Stonore. De pus qe vous auez [16]les tenemenz par le recouerir[16] Johan de Gosegray [17]en son temps Johan de Wrotham et Alice deuez vocher.[18]

Toudebi. Ou deuendra le vocher.

Spigurnel. Ou qi accoutera James apres le terme passe par dieu ofue Johan et Alice donqe couent il qe James eit eid de eux.

Stauntone. Volez graunter le eid car en autiel cas en banc fust leid grante et puis grante fust de la partie.

Spigurnel. Il nest pas curs de lei en cas de dowere a granter eid mais nouel cas chaunge la ley et duresce serreit qil perdreient lur vocher. Pur quoi eit eid.[19]

Et puis [20]vindrent Johan et Alice[20] et se ioindrent[21] et diseiont qe les tenemenz qe James ore tient en la forme auantdite furent lessez a Johan et Alice a terme de lur .ij. vies par Johan de Gosegray et par ceo fet ou il obliga lui et ses heirs a la garrantie etc. et de tiel estat vocherent agarantir par eid de cesti court. ensemblement ofue James de Cobham Johan le fitz Johan de Gosegray qi serra somons en ceste Counte.

[1–2] horspris de dowers et des tenemenz vers euz denz age δ; horspris de dowers et des tenemenz dez enfants denz age ζ; horspris de dowers et des tenemenz qe les enfanz deinz age tenent λ. [3] δ *adds* me. [4–5] de celz qe tient par estatut δ; des tenementz qil tient par estent ζ. [6–9] from λ and ζ. [7] ζ *omits.* [8–8] ζ *omits.* [10–10] Nous ne pomes rienz voucher et δ. Vous ne poez mie voucher car λ. [11–11] *from* δ *and* λ. [12] mayn δ. [13–13] si purroms nous voucher δ. [14] δ *adds* sa femme. [15–15] si perdroms nous δ. [16–16] ceux tenemenz par estente de la reconisance δ; ceux tenemenz recouerez et les auet par estente de la reconisance λ. [17–18] del temps pur quei J. de W. et A. sa femme ne daverez voucher δ; de cel temps si averez les tenements pur quei J. de W. et A. sa femme ne davez eide aver ζ. From [18–19] δ, with which ζ and λ mainly agree, reads: Stant. Voillez granter leyde. *Cant.* Nanyl. Stant. Cely qi dit cele parolle ne serra jammes sages homme qar a tieu temps fut en Bank qi resereit en meme le cours de ley ou leyde fut agarde. Et pus fut leyde grante de la partie. [20–20] vint A. et J. fitz meme cely A. δ; vint A. et J. son fitz, ζ. [21] δ *adds* oue James.

have extent of the tenements except as against tenants in dower and infants under age.[1] Consequently it seems that Maud is entitled under the Statute to dower against a tenant.

Spigurnel J. When extent is sued for the writ says that the Statute is not to apply against a woman that is tenant in dower, nor against an infant; but that does not prove that a woman will succeed on a writ of dower against one who holds under the Statute.

Toudeby as above. We cannot vouch. If the tenements had come to us by extent from the seisin of John of Goosegrey, then we could have vouched; but now the voucher lies in the mouths of John of Wrotham and Alice, and if we do not have aid of them we shall lose our voucher.

Stonore. Since you hold the tenements by the recovery of John of Goosegrey during his lifetime you ought to vouch John of Wrotham and Alice.

Toudeby. What will become of our voucher?

Spigurnel J. With whom will James account after the expiration of the term? Of a surety with John and Alice, and so he ought to have aid of them.

Staunton J. You must give aid; for in a similar case in Common Bench aid was granted, and it was afterwards given by the party.

Spigurnel J. Aid is not granted in case of dower in the usual course of law; but new circumstances call for changes in the law. It would be a hardship if they were to lose their voucher.

And thereupon he had aid.

And then came John and Alice and joined themselves [with James] and said that the tenements which James now holds in the manner aforesaid were leased to John and Alice for the term of their two lives by John of Goosegrey, who by the same deed bound himself and his heirs to warrant etc.; and together with James of Cobham they vouched to warranty of such estate, by aid of this Court, John the son of John of Goosegrey, who will be summoned in this county.

[1] There does not appear to be anything in the Statute to warrant this exception.

[1]Spigurnel. Coment le vocher vous ou vous iij. iointement.

Wescote. Ceo couent qe seit en vos auisemenz qar il ne semble qe Johan et Alice purrunt vocher souls sanz James qil nad rien si noun une tenance a terme en noun de franc tenement et Johan et Alice ont franc tenement a terme de lur .ij. vies pur quoi il couent qi sont parties a lespecialte qil vochent.

Spigurnel. Si vous vocher il vous couent vocher tutz .iij. qe del hure qe vous estes ioint ofue James vous tutz nest qe une partie pur quoi il couent qe vous vochez tutz .iij. ou qe vous pledez en chief.

Stonore. Si Johan et Alice vochent soul donqe serra en dreit de James le plee discontinue.

Wescote. Si tenant par la lei de Engleterre seit enplede et prie eid del heir en qi le dreit repose le heir put venir et sei ioindre et vocher soul ausi par de cea.

Spigurnel. Nest pas semblable.

Nota de voucher. Et pus vocherent en ceste forme Johan et Alice qi se ioignent ofue James vocher agarantir Johan le fitz Johan de Gosegray etc.[1]

Caunt. Estoise le vocher.[2]

[3]Heruy. Il couent qil estoisé qe vous ne auez rien a dire en contre le voucher.

Et furent aiornez etc.[3] a quel iour James de Cobham vint et dit qe Maud auoit relesse et quiteclame sa accion de dower a James tanqe a un an et mist auant fet qe ceo tesmoigne.

Stonore. Vous auez voche a garantir et mis vostre response en altri bouche jugement si [4]vous pussez tel respons doner.[4]

Stauntone. Volez demourer illoeqes en nostre agard.

Et il ne osat[5] pas demourer einz se retret[6] de la barre et furent[7] non suys etc.

[8]Ideo in misericordia.[8]

[1–1] δ, ζ, λ *omit.* [2] δ *adds* et unt iour a Lundi prochein apres la Nativite de Nostre Dame. [3–3] δ, ζ, λ *omit.* [4–4] tieu respons pussez ore joindre δ; vous pussez de celi respons enjoier ζ. [5] oseint δ. [6] retreunt δ. [7] fut demande et ne vint pas et fut δ, ζ, λ. [8–8] *from* ζ.

Spigurnel J. How are you going to vouch him? You [two] or all three of you jointly.

Westcote. That will be as you direct; for it does not appear that John and Alice can vouch alone without James, who has naught but a tenancy as of freehold for a term; and John and Alice have a freehold for the term of their two lives; and so they who are parties to the specialty ought to vouch.

Spigurnel J. If you vouch, all three of you must vouch; for since you [i.e. John and Alice] have joined yourselves with James, you all now constitute but a single party, and so you must all three join in vouching, or in pleading in chief.

Stonore. If John and Alice vouch alone, then James's plea will, in law, discontinue.

Westcote. If a tenant by the law of England be impleaded, and pray aid of the heir in whom the right reposes, the heir can come and join himself, and vouch alone. So here.

Spigurnel J. It is not a parallel case.

Then they vouched in form following: John and Alice, who join themselves with James, vouch to warranty John the son of John of Goosegrey etc. Note the manner of vouching.

Cambridge. We allow the voucher.

Staunton J. You must needs allow it, for you have nothing to say against it.

And the matter was adjourned till etc., upon which day James of Cobham came and said that Maud had released and quitclaimed to James in respect of her action for dower for a year; and he produced a deed which showed this.

Stonore. You have vouched to warranty, and make your defence through the lips of others. Judgment whether you can make such answer.

Staunton J. Will you abide our judgment?

But he [1] dared not abide judgment, and went away from the bar, and was nonsuited etc; and so in mercy.

[1] *Sc.* Maud's attorney.

III.[1]

Dowerre porte devers tenaunt par statut marchaunt qe pria eyde des ceulx a terme de vie vers queux il avoit recoveri et habuit ou il fut ouste dil la vewe pur ceo qe soun entre fut acounte par le baroun qe se obliga et ne pas par les tenantz a terme de vie vers queux il recovery.

Margerie qe fut la femme Johan de B. porta soun bref de dowerre vers Mestre James de Cobham qi vint en court et demanda la vewe.

Wescote. La vewe ne devez avoir qe vous entrastes[2] par notre baroun.

Toud. Ceo ne poez dire qe nous entrames[3] ceux tenemenz par execucioun de Statut Marchant par quel estatut le dit Johan etc. suimes[4] lexecucioun hors de la seisine Robert de W. et Alice sa femme qi tindront al terme de lour vies et ceo apres la mort Johan de G. jugement etc.

Et fut ouste de la vewe par Spigurnel pur ceo qe soun entre fust ajuge de ley par celui qe se obliga et nemie par le tenaunt a terme de vie.

Et puis dit *Toud.* lestat James de C. si nest mes a terme des aunz par une execucioun fete hors de la seisine Robert et Alice qe ceux tenemenz tindront a terme de lour vies et a la vie un Geffrei fitz mesmes celui Robert et Alice saunz qe nous ne poems etc. et prioms eide de eux.

Stonore. Vous estes tenant du fraunc tenement et nostre demande ne se talie fors de fraunc tenement et issi tenaunt de nostre demande jugement si en cesti bref de dower eide devez avoir.

Toud. ou devendroit la garantie Robert et Alice et Geffrei si eide ne fut graunte qe[5] pout estre qe Margerie sourvivera le terme James.

Hervi. En autiel caas en Baunk eide lui fut graunte ove qi deit[6] James a counter apres ceste terme passee pardieu ove Robert et Alice et Geffrei donqe covient il qe James eit eide de eux.

Pass. Lestat qil demandent si est plus haust qe ne soit nostre tenaunce qe nest mes a terme qe pout estre estime[7] par lestente qe lour demande est a terme de vie. Jugement si nous ne devoms eide avoir.

[1] Text of (III) from *a* collated with *β*. The note in *aa* is :—Dowerre demande vers tenant par statut marchaunt et la vewe fust demande et fust ouste pur ceo qe son dreit fust ajuge par la ley de Engleterre par celi qe se obligea et ce fust le baroun par quei etc. ofve les tenantz recoveri par quei les ij. qe les tindrent a terme de lur ij. vies du lees celui qe fust oblige et le tenant pria eide de eux et * fust dit qe eide ne fust mie grauntable en dowerre. The note in *β* is practically the same as that in *aa* up to the point marked with an asterisk. After that it reads :—habuit furent somonez e vinderent e se joindrent ove le tenant e vocherent.

[2] entratus *β*. [3] entramus *β*. [4] siwimus *β*. [5] ne *β*. [6] dite *β*. [7] eyme *β*.

III.

Dower brought against a tenant by Statute Merchant. The tenant prayed aid of the tenants for life against whom he had recovered and had it allowed. But he was not allowed view, because he had entered by the husband that was obligee [under the Statute] and not by the tenants for life against whom he had recovered.

Margery that was wife of John of B. brought her writ of dower against Master James Cobham, who came into court and demanded view.

Westcote. To view you are not entitled, seeing that you entered by our husband.

Toudeby. That you are not entitled to say, for we entered these tenements by virtue of Statute Merchant, under which Statute the said John etc. We sued execution out of the seisin of Robert of W. and Alice his wife, who had an estate therein for the term of their lives, and that we did subsequently to the death of John of G. Judgment etc.

But Spigurnel J. refused him view because his entry was, in the sight of the law, by the obligee and not by the tenant for life.

And afterwards *Toudeby* said: James Cobham's estate is merely an estate for a term of years of which he has sued out execution from out the seisin of Robert and Alice who are tenants of these tenements for the term of their lives and for the life of one Geoffrey, that is son of these same Robert and Alice; and without these we cannot etc., and we pray aid of them.

Stonore. You are tenant of the freehold and our demand attaches to naught but the freehold, and so you are tenant of our demand. Judgment whether you ought to have aid in this writ of dower.

Toudeby. What will become of Robert and Alice and Geoffrey's right to warranty if aid be not granted, for it may well happen that Margery may outlive James's term?

Staunton J. Aid was granted in Bank in a similar case. With whom will James have to reckon when this term has expired? With Robert and Alice and Geoffrey *par dieu.* Then James ought to have aid of them.

Passeley. The estate which they demand is a higher one than our tenancy, which is but for the term to be covered by the extent, while their demand is for a life-term. Judgment whether we ought not to have aid.

Stonore. Nostre demande si est del dowerre et en execucioun sur statut si est forspris douerre et [1]enfaunt deinz age[2] execucion ne se fra mie. Jugement si nostre dowerre devez targer.

Spig. Granteez leide.

Caunt. [3]Nous ne fioms paas.[4]

Pass. Et nous jugement du bref.

Et puis fut leide grauntee.

Spig. Il nest paas cours de lei en dowerre a graunter eide mes novel caas change la lei et grant duresse serreit ceo qil perdissent lour voucher. Et dautre part James naad qe un terme issi qe la dette soit leve et vostre recoverir est a vostre vie qe peut estre lx.[5] aunz a la volente Dieu et issi plus haut qe ne soit soun estat. Et pur ceo eiez leide.

E[6] puis vindrent et se joindrent a James et voucherent a garant Henri fiz et heir Johan de G.

Spig. Coment le vouchez vous ou vous treis jointement ou Alice et Johan[7] severalment.

Wescote. Ceo covient qil soit en votz avisementz qar il semble a nous qe Alice et Johan deverioint voucher soul saunz James qar James nad rien si noun une tenaunce en noun de fraunc tenement &c. Et Alice et Johan unt un fraunc tenement a terme de lour ij. vies par qei il covient qe ceux qe sount a cel les prive e al especiaute qil vouchent.

Spig. Si vous vollez vouchez totez treis car de hure qe vous estes joint o Jamus vous touz nestz que un partie par qey il covient qe vous vouchiez tout treis ou qe vous pledez en chef.

Ston. ad idem. Si Alice et Johan vouchereint soul saunz James donqes le ple James discontinue.

Wescote. Si le tenant par la lei dengelterre soit enplede et prie eide dil heir en qi le dreit repose le heir put venir et ioindre et voucher soul. Auxi par de za.

Spig. Nest paas semblable.

Et puis voucherent en ceste fourme :—Alice et Johan qe se ioingnont ensemblement ove James vouchent a garante Henri fitz et heir Johan de G.

Caunt. Estoise le voucher.

Hervi. Il coveint qil estoise qe vous navez rien a dire encountre le voucher.

[1–2] en fraude de eus *β*. [3–4] non ferom *β*. [5] xl. *β*. [6] *from β*; qe *α*. [7] *sic*, and subsequently.

Stonore. Our demand is for dower; and dower and infant under age are exempt from execution under the Statute.[1] In these cases there is no execution. Judgment whether our dower should be delayed.

Spigurnel J. Will you consent to his having aid?

Cambridge. We cannot do that.

Passeley. And we ask for judgment of the writ.

But afterwards aid was allowed.

Spigurnel J. Aid is not allowed in dower in the usual course of the law, but novel circumstances alter the practice; and it would be a great hardship if they were to lose their voucher. And besides this, James's term is only so long as the debt remains undischarged, while your recovery is for the term of your life, which may be for sixty years, if God so will, and so your estate is a higher one than his. And so you may have aid.

And then [Alice and Geoffrey] came and joined themselves with James and vouched to warranty Henry the son and heir of John of G.

Spigurnel J. How are you going to vouch him? You three jointly, or Alice and Geoffrey severally?

Westcote. That will be as the Court directs, but it seems to us that Alice and Geoffrey ought to vouch alone without James, for James has only a tenancy of the nature of a freehold, while Alice and Geoffrey have a freehold for the term of their two lives; wherefore it seems that those that are parties to the lease and specialty should vouch.

Spigurnel J. If you want to vouch, let all three of you vouch; for, since you have joined yourselves with James, the three of you make but one party; and so you ought all three to vouch or to plead in chief.

Stonore, ad idem. If Alice and Geoffrey vouch alone without James, then there is discontinuance of James's plea.

Westcote. If a tenant by the law of England be impleaded and pray aid of the heir in whom the right reposes, the heir can come and join and vouch alone. So here.

Spigurnel J. The case is not a similar one.

And then they vouched after this fashion:—Alice and Geoffrey, who join themselves with James, vouch to warranty Henry the son and heir of John of G.

Cambridge. We allow the voucher.

Staunton J. You must needs allow it, seeing that you can say nothing to prevent it.

[1] The Statute does not show this.

[1]NOTA.

Dowerre ou vewe de terre est mis encontre la demaunde.

En bref de dowere le tenaunt demaunda la vewe [2]le demaundaunt dit qe la vewe ne deveit il[3] avoir qe nostre baroun moroust seisi.

[4]*Laufare.* le baroun ne morust pas seisi prest etc.

Bacoun. qe si sit prest etc.

Et puis *Wescote* : vous avez mis vewe de terre encountre nostre[5] demaunde qe si trove soit qe le baron la femme morust seisi ele avera seisine de terre et si noun vous averez la vewe etc.[6]

[7]ANON. *v.* ANON.

[8]I.

Le dote.

Une femme porta son bref de dower vers Willem and Willem voucha [9]a garantir[10] J. de B. qi entra en la garauntie & dit qe ceò fust le droit sa femme and pria eide de sa femme.

Hervi par qele ley volez vous aver eide[11] navez vous garanti par [12]vostre fet[13] demene.

Bacoun donqes diom nous qe les tenementz sount del droit nostre[14] femme & veez la ci & se joynt ove son baron & son baron & luy vochent a garauntir &c. un Richard[15] de B.

Stonore ele ne se doit joyndre qar ele ne vient par nul proces ne vous ne mostrez nule cause pur qey ele se doit joyndre a son avauntage &c.[16]

Bacoun donqes dioms qe vous avez ci Jon qi vouche a garauntir un J. de B. and Alice sa femme[17] &c. & dona a Jon autre surnoun qe il navoit la ou il fust vouche.

Stonore il vouche ly mesme & sa femme mes[17] de vocher sa femme ne serra mie resceu sil ne dye cause ou[18] pur ceo qe la femme dona les tenementz a son baron avant les esposailes [19]ou launcestre la femme qi

[1] Note from α, $\alpha\alpha$, β, γ, δ and ϵ. Text from α collated with β, γ, δ and ϵ. Marginal note from $\alpha\alpha$ and β; α has *Dowerre* only. [2–3] le demaundaunt la vewe ne devez δ; le demandant dist qe il ne dust la vewe ϵ. [4–6] Nota par *Westcote* si trove soit qe le baron ne morust pas seisi le tenant avera la vewe et si le revers la femme recovera seisine de terre qar en ceo cas le tenaunt mes sa terre en countre la vewe γ. δ *and* ϵ *have the same, with slight variations.* [5] *from* β; α *has* vostre. [6] The question on which issue was joined was, according to E. R., whether the husband died seised or not. A jury was awarded for a future day, but apparently the matter dropped for want of prosecution. [7] Reported by β, γ, δ, ϵ, ζ, η, θ, λ. [8] Text of (I) from γ collated with δ, ϵ, ζ, λ. [9–10] *from* ϵ; etc. γ. [11] ζ *adds* de vostre femme. [12–13] dreit vostre fet λ. [14] vostre λ. [15] R. δ; Jon λ. [16] qar a ly rienz ne perist δ; car ali rien decrest λ. [17–17] δ *omits* (*sic*). [18] etc. et δ. [19] to [2] on p. 72 et par cele cause avoms vouche δ.

NOTE.

Dower: where view of the land is put in issue against the demand.

In a writ of dower the tenant demanded a view. The demandant said that he ought not to have a view, for our husband died seised.

Laufer. The husband did not die seised. Ready etc.

Bacon. Ready etc. that he did die seised.

And afterwards *Westcote* said:—You have put view of the land in issue against our demand, so that if it be found that the woman's husband died seised she will have seisin of the land, and, if the contrary be found, you will get your view.

ANON. *v.* ANON.

I.

Dower.

A woman brought her writ of dower against William; and William vouched to warranty J. of B., who warranted, and said that [the tenements] were his wife's right, and prayed aid of his wife.

STAUNTON J. Under what law do you seek for aid? Have you not warranted of your own sole right?

Bacon. Then we tell you that the tenements are of the right of our wife, who is here; and she joins herself with her husband; and her husband and she vouch to warranty etc. one Richard of B.

Stonore. She ought not to be allowed to join herself, for she is here through no process of law; and you allege no peril to herself as reason why she should be allowed to join.

Bacon. Then we tell you that you have here John who vouches to warranty one J. of B. and Alice his wife etc.—and here *Bacon* attributed to John a different surname from that by which he was vouched.

Stonore. He vouches himself and his wife, but a man's voucher of his wife will not be received unless he show some material cause why it should be; or unless the wife gave the tenements to her husband

heir ele est mes le dreyn point ne peut il dire qar le piere la femme est en pleine vye.

Bacoun ele dona les tenementz[1] avant les esposailes a Jon & par tiele cause avoms voucher.[2]

Malm. ele ne[3] dona unqes rien a son baron ne il navoit unqes rien de son doun prest &c.

Mes il ne pout estre rescue a cel averrement qar en cas de voucher statut donne[4] laverrement [5]e le taille[5] en certein [6]qe [7]nest pas tiel mes dautre fourme[8] ut patet in statuto & ideo[9] stetit vocacio.

[10]II.

Dowerre ou le baroun fut vouche et entra en la garauntie et pria eide de sa femme et non habuit et apres voucha li mesme et sa femme et stetit vocacio et la femme vint et voucha outre racio pur ceo qil fut feffe par la femme avaunt lesposailles.

Une femme porta bref de dowerre vers William Tallbot William voucha a garaunt Adam le fiz Roger le Taverner de Canterburie Adam vint en court et garaunta et dit qil trova sa femme seisi de ceux tenemenz demaundez[11] dount il [est] vouche et prie eyde de lui qi vint en court et se voleit aver joint ove soun baroun et aver vouche outre un Robert.

Laufare. par sa priere ne deit sa femme a lui joindre ne la femme le demaundant de soun dowerre estre[12] delaie par cest voucher Kar Adam fut vouche et soul entra en la garauntie par soun fet demeygne jugement sil puisse dire qe les tenemenz qil aad soul garauntz sount du dreit sa femme.

Hervi. il navera paas ceste eyde sil ne die autre chose.

Bacoun. donqe vouchoms a garaunt un Adam de Canterburie et Emma[13] sa femme par eyde de ceste courte qe serrount somouns en ceste conte.

Laufare. Jugement de cest voucher Kar cesti Adam qest vouche [14]est mesmes celui Adam qe est vocher[15] et ceste Emma[16] est sa femme jugement sil puisse lui mesmes voucher.

[1] ϵ *adds* a son baron. [2] from [19] on p. 71 et par cele cause avoms vouche δ. [3] δ *omits.* [4] taile λ. [5–5] λ *omits.* [6–9] forme sicom il pert par estatut pur quei sil ne tendra laverement en forme destatut il poeit estre resceu et δ. [7–8] λ *omits.* [8–9] com il pert par estatut pur qei sil ne tende laverement en forme de statut il ne peut ressu et λ. [10] Text of (II) from α collated with β. The note in β is :—
Dowerre ou un homme vocha ly meme et sa femme et dit fut qil ne serreit mie a ceo receu sil ne dit comen e il qe la femme ly enfeffa devant les esposailus e le demandant mye receu a dire qil ne ly enfeffa point avant les esposailus. Respice placitum.
[11] β *omits.* [12] β *adds* oste e. [13] M. β. [14–15] β *omits.* [16] Maude β.

before marriage, or an ancestor of the wife, whose heir she is, did so; and this last reason he certainly cannot allege, as his wife's father is in full life.

Bacon. She gave the tenements to John before marriage, and for that cause we have vouched her.

Malmerthorpe. She never gave aught to her husband, nor had he ever aught by her gift. Ready etc.

But he could not be received to make this averment, because the Statute prescribes a certain form[1] in which an averment in the matter of voucher must be made, and he had tendered an averment not in the form as set out in the Statute, but in another. And so the voucher stood.

II.

Dower. Where the husband was vouched and warranted and prayed aid of his wife, but had it not. Afterwards he vouched himself and his wife; and the voucher was allowed, and the wife came and vouched over, because she had enfeoffed her husband before marriage.

A wife brought a writ of dower against William Talbot; and William vouched to warranty Adam the son of Roger Taverner of Canterbury. Adam came into Court and warranted, and said that he found his wife seised of the tenements now demanded and in respect of which he is vouched. And he prayed to have aid of his wife. And she came into Court and desired to join herself with her husband, and to vouch over one Robert.

Laufer. His wife ought not to be allowed to join with him [merely] on her own request; nor ought the woman that is demandant to be delayed of her dower by this voucher; for Adam was vouched and he warranted alone of his own sole right. Judgment whether he is now entitled to say that the tenements which he has warranted alone are of his wife's right.

Staunton J. He will not be allowed our aid if he do not say something else.

Bacon. Then we vouch to warranty by aid of this Court one Adam of Canterbury and Emma his wife, who will be summoned in this county.

Laufer. Judgment of this voucher; for this Adam that is vouched is the same Adam that vouches him, and this Emma is his wife. Judgment whether he can vouch himself.

[1] See the Statute *De presentibus vocatis in Warantum* of 20 Edward I in *Statutes of the Realm*, I, p. 108.

HERVI. a cel voucher ne avendra[1] il paas Kar il bie fere degre entre lui et sa femme et ceo ne fra il paas sil ne moustre coment.

Bacoun. Sire le caas est tiel qe Adam lessa le dreit Emma[2] sa femme et ore est celui enplede a qi il lessa et aad vouche Adam et Adam et Emme unt lour voucher outre com de dreit Emme[3] et a cel voucher ne poount il avenir si cest voucher ne soit suffert par qei nous prioms votz avisementz.

HERVI. uncore avez dit trop poz.

Malm. et nous jugement de soun voucher sil ne die autre chose.

Fr. il ne peut voucher lui mesmes et sa femme en nul caas si auncestre la femme ne leyt feffe ove garauntie ou sa femme avaunt qil la esposa et qe sa femme seit [4]le heir[5] launcestre et ceo nad il paas uncore dit.

Bacoun. donqe vous diom nous qe launcestre Emme[2] nous enfeffa avaunt les esposailes etc. et issi le vouchom nous com avaunt Adam et Emme[3] sa femme com heir William.

Malm. com heir William ne poetz Emme voucher Kar William est en pleine vie et ceo voloms averrer.

Bacoun. Statut ne vous doune mie tel averrement.

HERVI. quidez vous fourcher vostre response et issi delaier la femme de soun dowerre quaunt ele voet averrer qe William est en pleine vie.

Bacoun. [6]pur eser la court nous vous dioms qe Emme[2] mesmes avaunt ceo qe nous la esposams nous enfeffa et issi vouchoms nous etc. *ut prius.*

Laufare. vous mesmes[7] avez conu qe vous trovastes[8] vostre femme seisie et puis deites[9] qe soun auncestre vous enfeffa avaunt les esposailes[10] jugement si ore pussez dire qele vous enfeffa.

Bacoun. put ester ensemble eaunt regard a divers temps.

Malm. nous voloms averrer qele ne vous enfeffa point avaunt etc.

Bacoun. averrement en countra le voucher est donee en certeyn par statut et nul autre ne put avenir par quei a cest averrement qe nest mie donee par statut ne devez avenir[11] et de ceo [12]demoray jeo[13] en jugement et si vous voillez[14] laverrement qe statut vous doune nous le [15]resceiveroms volenters[16] qe lui ne ses[17] auncestres etc.

HERVI. [18]autre averrement qe soulom statut ne poount il aver[19] et

[1] vendra *β*. [2] Maud *β*. [3] M. *β*. [4–5] leyr *β*. [6] *β adds* sires. [7] *β omits*. [8] trovastuz *β*. [9] ditz *β*. [10] esposailus *β*. [11] etc. *β*. [12–13] demourray *β*. [14] volez *β*. [15–16] receyvoms volunters *β*. [17] ces *β*. [18–19] a autre averement qe statut ne doigne ne put il avenir *β*.

STAUNTON J. To that voucher he will not attain, for by it he assumes that he and his wife are independent parties, and in that he will not succeed unless he shows good reason.

Bacon. Sir, the case is this. Adam leased the right of Emma his wife ; and now he to whom he leased it is impleaded and he has vouched Adam ; and Adam and Emma have their voucher over, as Emma's right is concerned. But to that voucher they will not get if this voucher be not allowed ; and thereupon we ask your ruling.

STAUNTON J. You have not shown sufficient cause yet.

Malmerthorpe. If he has naught else to say we ask judgment of his voucher.

Friskeney. He cannot, in any case, vouch both himself and his wife unless his wife's ancestor enfeoffed him with a warranty, or his wife so enfeoffed him before marriage, and his wife also be her ancestor's heir ; and of this has he yet said naught.

Bacon. Then we tell you that Emma's ancestor enfeoffed us before marriage etc., and so we vouch them as before, Adam and Emma his wife as William's heir.

Malmerthorpe. You cannot vouch Emma as William's heir, for William is in full life ; and that we will aver.

Bacon. Such an averment the Statute does not entitle you to make.

STAUNTON J. Do you suppose you can split your answer, and so delay the wife from getting her dower, when she wants to aver that William is alive ?

Bacon. To assist the Court we tell you that Emma herself enfeoffed us before we married her, and so we vouch etc. *as before.*

Laufer. You yourself admitted that you found your wife seised, and then you said that her ancestor enfeoffed you before the marriage. Judgment whether you can now say that she herself enfeoffed you.

Bacon. But it is possible that these statements are consistent, regard being had to different times.

Malmerthorpe. We will aver that she did not enfeoff you before etc.

Bacon. The Statute gives a certain form to be used in an averment against a voucher, and in no other form can you make such averment. Consequently you cannot succeed in making your averment, as it is not formulated in the words of the Statute. And on this I await judgment. If, however, you like to make such averment as the Statute permits, we will assent willingly to your doing so ; to aver, that is to say, that neither she nor her ancestors etc.

STAUNTON J. They are entitled to no averment except such as the

pur ceo qil ne poount estre resceu a defere le feffment qil alleggent [1]si ne voleiom (*sic*) aver averre qe celui qil vint voucher navoit unqes rien etc. puis la seisine etc. auxi com statut doune et ceo ne poount il dire pur ceo qe Adam trova sa femme seisi etc.

Malm. graunta le voucher et meintenant vint la femme en court et voucha outre etc.[2]

[3]III.

Une Maude porta son bref de dower vers un tenant qi vocha a garantir un Johan qi vint encourt et dit qil troua une Johane sa feme seisi de memes les tenemenz saunz qi etc. et prie eide de ly etc.

Cant. Eide ne devet auer qar vous soul entrastes en la garantie et soul garanti jugement si eide etc.

Bacoun. Nous sumes tenant par nostre garantie et issi en lestat qe nous fumes quant nous alienames pur quei si nous ne eioms eide de nostre feme nous perdoms nostre vocher.

Stauntone. Si vous perdez vostre vocher est en vostre folie de vostre feffement de dreit vostre feme pur quei dites outre.

Bacoun. Vous auez cy Johane qi se ioint a Johan son baron et vouche a garanti etc.

Stonore. J. nest pas en cas de statut de estre resceu a pleder etc. ne de comune ley ele ne se purra ioindre a son baroun qar ele ne vient pas par proces.

Staunt. Il vous dit ley dites outre.

Bacoun. Vous auez cy qi vouche a garanti J. de Cauntebirs et Johane sa feme qi seront somons etc.

Malm. Vous vouchez vous meme Johane vostre feme mustrez donqes qe vous estes en cas de auer garanti de vostre feme en court.

Et ceo la ly dit fut par la court.

Bacoun. Nous vous dioms qe Willem pere nostre feme dona memes lez tenemenz a nous et a nostre feme et obligea etc. et issi vochoms nous meme et nostre feme com heir son pere.

Malm. Com heir son pere ne la poez vocher qar Willem son pere est en plein vie et estre ceo tut fut Willem mort vostre feme ad un frere en plein vie qi serra le heir Willem.

Et pur ceo qe la verite fut cele

[1–2] *β omits.* [3] Text of (III) from *η*.

Statute allows, and moreover they cannot be received to vary the feoffment which they alleged, unless Adam be willing to aver that she whom he comes to vouch never had aught etc. after the seisin etc., according to the form set out in the Statute ; and that he cannot say, for he found his wife seised etc.

Malmerthorpe allowed the voucher ; and then the wife came into Court and vouched over etc.

III.

One Maud brought her writ of dower against a tenant who vouched a certain John to warranty. John came into Court and said that he found one Joan his wife seised of these same tenements, without whose etc. ; and he prays aid of her etc.

Cambridge. You ought not to have aid, for you alone entered into the warranty, and you alone warranted. Judgment whether you ought to have aid.

Bacon. We are tenant by our warranty, and so are in the same position as when we alienated. Consequently if we do not get aid of our wife we shall lose our voucher.

Staunton J. If you lose your voucher it will be because of your folly in setting up a feoffment by your wife ; so answer over.

Bacon. You have here Joan who joins herself with John her husband and vouches to warranty etc.

Stonore. J. does not come within the conditions of the Statute so that she may be received to plead etc. ; nor can she, by the common law, join herself with her husband, for she is not here by legal process.

Staunton J. What he tells you is good law. Plead over.

Bacon. You have here one who vouches to warranty John of Canterbury and Joan his wife, who will be summoned etc.

Malmerthorpe. You are vouching Joan that is your own wife. You must show that you are within the conditions entitling a man to have the warranty of his wife in Court.

And to the same effect the law was stated by the Court.

Bacon. We tell you that William, our wife's father, gave these very tenements to us and to our wife, and bound etc., and so we vouch ourself and our wife as her father's heir.

Malmerthorpe. You cannot vouch her as her father's heir, for William, her father, is in full life ; and further than that, even if William were dead, your wife has a brother in full life who would be William's heir.

And because so in fact it was,

Bacoun. Ceo fit altre cause. Johane enfeffa Johan avant lesposaille et obliga etc.

Malm. Johan nauoit unqes rien de doun Johane prest etc.

Bacoun. A ceo ne deuet avenir qar contre de vocher est done par statut qe celi qi est voche ne fut unqes seisi en demene ne en service etc. Donqes depus qe laverement qe vous tendez nest pas done par statut jugement etc.

Et pur ceo qe qe le delay nest meus qe iter[1] le vocher fut suffert set non per judicium unde questio.

[2]GATTON *v.* NORTHWODE.

[3]I.

Dowere.

Imaygne[4] qi fust la femme H.[5] de Gattone[6] porta son breve de dowere vers Johan de Norwode[7] come vers Gardein etc. qi dit qil nauoit rien en ceus tenemenz si noun du lees Berthilmeue de Batlesmere[8] ioint ofue nostre femme etc., jugement de breve.

Loueday suffrit le breve abatre et fust mult blame.

Et pus porta ele breve vers J. de N. et sa femme qi aueiont [9]la vewe[10] pur ceo qe il ne fust mie gardein des terres le heir le baroun de qi dowement etc. Et puis dit il ofue sa femme qe eux tindrent [11]ceux tenemenz du lees Sire Berthilmeue qi les tint a la volunte le Roi rendaunt de ceo par an al Escheqer xx. *li.* et mostra auant le fet le Roi fet a Sire Berthilmewe qe ceo tesmoigne[12] et puis[13] le fet Sire Berthilmeue [14]et qe il ofue[14] sa femme aueiont son estat et fust la parole aiorne tanqe a un autre[15] iour pur ceo qe ceo fust en Eire et [16]comande fust a la femme qele[16] suist al Roi en le meen temps mais si le Roi oust done la garde ou lesse tanqe al age le heir le gardein ont response par statutum.[17]

[1] See *Introduction*, p. xx. [2] Reported by *α* (twice), *αα*, *β*, *γγ*, and *ε*. Names of parties from E. R. [3] Text of (I) from *αα* collated with *α*, *β*, and *γγ*. [4] Juliane *β*; Isameyne *γγ*. [5] Haucond *α*, *β*. [6] Baccoun *γγ*. [7] Nortwode *γγ*. [8] Badlesmere *α*, *β*; Badesmere *γγ*. [9]–[11] *γγ omits*. [10] value *β*; value *in α*, *over which in a hand that seems much later* view *has been written*. [11]–[12] et cel estat avoient il &c. et mist avaunt la chartre le Roy fet a Sire B. qe tesmoigna qil les tient a la volunte le Roy rendaunt de ceo par an a leschequer xx. *li. α*, *β*. [13] *α*, *β omit*. [14]–[14] qe lui et *α*, *β*. [15] certein *α*, *β*. [16]–[16] qe la femme *α*, *β*. [17] *α*, *β add* de Bigamis.

Bacon said: Then we take another ground. Joan enfeoffed John before marriage, and bound etc.

Malmerthorpe. John never had aught by the gift of Joan. Ready etc.

Bacon. To that [averment] you ought not to get, for it is not in conformity with the voucher granted by the Statute, which lays it down that the vouchee must not have been seised in demesne nor in service etc. Since then the averment that you propose to make is not allowable under the Statute, judgment whether etc.

And because the delay cannot over-ride the Eyre[1] the voucher was allowed, but not by judgment. And it is arguable.

GATTON *v.* NORWOOD.

I.

Dower.

Imogene that was wife of H. of Gatton brought her writ of dower against John of Norwood as against the guardian etc., who said that he had naught in those tenements save by the lease granted by Bartholomew of Badelsmere and his, John's, wife jointly etc. Judgment of the writ.

Loveday submitted to having the writ abated, and was much blamed.

Imogene afterwards brought a writ against J. of N. and his wife; and they had a view because John was naught more than guardian of the lands of the heir of Imogene's husband, by whose endowment etc. And then John and his wife answered jointly that they held those lands by the lease of Sir Bartholomew, who held them at the will of the King, paying into the Exchequer therefor an annual rent of twenty pounds. And he produced a deed made by the King in Sir Bartholomew's favour which was proof of this. And then he produced the deed of Sir Bartholomew by which he and his wife took Sir Bartholomew's interest in the lands. And the matter was adjourned to another day[2] because this was in Eyre; and the wife was bidden to petition the King in the meanwhile. But if the King had granted or leased the wardship till such time as the heir attained full age, then the guardian would have been entitled by Statute[3] to answer.

[1] See *Introduction*, p. xx.

[2] Not to one of the usual return days as would have happened if the cause had been before the Court at Westminster. And note that the use of 'day' above is only colloquial. The whole Eyre constituted but a single day. See p. 82 *infra*.

[3] See the Statute *De Bigamis*, 4 Edward I, c. III (*Statutes of the Realm*, I, p. 43).

Et puis suist Imaigne al Roi [1]et le Roi manda[2] qil alassent auant en le plee et puis dit la femme qe un tiel fust seisi de ceux tenemenz en son demene come de fee et de dreit qi dona ceux tenemenz a [3]Sire B.[3] et a ses heirs et issint fust il seisi pus les esposailes qe dowere la pout.

Pass. Unqes seisi etc.[4]

Note from the Eyre Roll.

John and Joan take Exception as follows :—

Johannes et Johanna per attornatum suum veniunt et dicunt quod predictum manerium unde etc. post mortem cujusdam Johanne que fuit uxor Hamonis de Gatton que illud tenuit ad terminum vite etc. de hereditate Edmundi filii et heredis predicti Hamonis devenit in manus domini Regis nunc ratione etatis ejusdem heredis etc. qui quidem dominus Rex postea manerium illud commisit cuidam Bartholomeo de Badlesmere tenendum quamdiu eidem domino Regi placuerit reddendum inde per annum ad scaccarium etc. viginti marcas. Et dicunt quod idem Bartholomeus postmodum dimisit predictum manerium eisdem Johanni et Johanne tenendum in forma predicta etc. reddendo ad idem scaccarium predictas viginti marcas unde

[5]II.

Dowere porte uers gardein et deuers sa femme qi disoient qil nauoient rien si noun a la volente un B. qi tint dilles le Roy pur qi il rendirent xx. marks al Eschekker.

Maud qe fut la femme Robert Dewope porta soun breve de dowere uers Johan de Nortwolde leigne et Jone sa femme de la tierce partie dil maner de W. et fut le breve tiel. Precipe Johanni de Northwolde seniori et Johanne uxori eius custodibus terre et unius heredum Edmundi de Gattone.

Pass. Johan et Jone ne unt rien en la garde si noun a la volente Sire Berthilmeu de Badelsmere rendaunt xx. marcs par an dount ceo qe nous rendoms al Escheker cest pur Berthilmeu de Badelsmere et Berthilmeu nad rien si noun a la volente le Roi du lees le Roi par quei saunz le Roi ne pooms pas rendre.

Caunt. Cest un cas de dowere ou la ley est fauorable et nentendoms point qe mester soit de parler au Roi.

Westcote. Si nous rendissoms saunz le Roi nous perdissoms taunt qe descrescereit de ceo qe nous tenoms au ferme a la volente le Roi qe ialemains payeroms la ferme entier a lescheker.

[1–4] qil allassent avant. *α*, *β*. [1–2] etc. *γγ*. [3–3] nostre baron *γγ*.
[5] A second report from *α*.

And then Imogene petitioned the King, and the King sent word that they were to go on with the matter. And afterwards the wife said that such an one was seised of these tenements in his own demesne as of fee and right, and that this same one gave these tenements to Sir B. and to his heirs ; and consequently the husband was so seised of the tenements after marriage as to render them liable to dower.

Passeley. Never seised etc.

Note from the Eyre Roll—*continued.*

dicunt quod ipsi non debent predicte Ismanie domino Rege inconsulto inde respondere etc.

Ideo datus est dies ; et interim loquendum est cum Rege etc. The King orders the hearing to proceed.

The Plea was :—Quod predicta Ismania dotem inde habere non debet etc. Dicunt enim quod predictus Robertus quondam vir etc. die quo ipsam desponsavit nec unquam postea fuit in seisina de predicto manerio ut de feodo ita quod ipsam inde dotare potuit. Et de hoc ponunt se super patriam.

Ismania was nonsuited ; so John and Joan go away *sine die*, and Ismania and her pledges are in mercy.[1]

II.

Writ of dower brought against a guardian and his wife, who answered that they had naught save at the will of one B. that was tenant by lease from the King, and rendered therefor twenty marks to the Exchequer.

Maud that was wife of Robert Dewope brought her writ of dower against John of Norwood the elder and Joan his wife, claiming the third part of the manor of W. And the writ ran in this wise : 'Command John of Norwood the elder and Joan his wife that are guardians of the land and of one of the heirs of Edmund of Gatton.'

Passeley. John and Joan have naught in the wardship save at the will of Sir Bartholomew of Badelsmere who pays twenty marks yearly. Consequently what we pay into the Exchequer is paid on Bartholomew of Badelsmere's account. Bartholomew has naught except by lease from the King at the will of the King. Wherefore without the King we cannot render.

Cambridge. This is a question of dower, and the law favours us. We do not think it is necessary to address the King.

Westcote. If we were to render without the King we should lose to that extent on what we hold at a rent at the King's will, but should nevertheless have to continue to pay the rent for the whole into the Exchequer.

[1] *m.* 35.

Par la Court fut agarde que la parole demorast taunt qe a un certein jour Et interim loquendum est cum Rege etc. Et puis maunda le Roi qil alassont auaunt en le plee.

Pass. Johan de Gattone tint ceux tenemenz du Roi et morust etc. le Roi le seisist en sa mayn par le nounage Edmund sounz fiz. Edmund morust en la garde le Roi et ses deus soers qe sount de deinz age le Roi seisi de la garde par le noun age etc. ut supra. Et nous sumes gardein de la terre ambedeux les heirs coment qe nous ne seoms gardein forsqe dil corps lun des heirs et vostre garaunt de aler auaunt en ceste plee ne suppose qe nous ne sumes gardein forsqe de la terre un des heirs pur quei nentendoms point qe vous eez garaunt de aler auaunt en ceste plee qe la breve voet custodibus terre et unius heredum.

Fr. Il peut estre bien qe vous seez gardein de la terre qest lour heritage en comune et du corps un des heirs.

Pass. Donqe direit soun breve custodibus terrarum et heredum et ne mie unius heredis. Kar nous sumes gardein de la terre lun heir et de lautre et pur ceo doutoms nous si nous rendissoms dowere la ou nous sumes nomes forsque gardein un des heirs qil nous ne serreit alowe a lescheker en nostre ferme dillentier pour ceo qe nous sumes gardein lun et lautre et de lour heritage.

Spigurnel. Volez vous rendre nous ne suffroms point pur lestat le Roi estre ceo le Roi nous aad maunde qe nous ailloms auaunt etc. et fasoms droit et estendre la terre. Et quant la terre serra estendue serra maunde a la Chauncerie et la serra ele dowe et illockes vous voillent alower en vostre ferme ceo qe vous descret de vostre tenaunce.

Fr. in secreto le breve est assez bon qe si le breve deit custodibus terre unius heredis la ne vaudreit il riens.

Spigurnel. Si ele eust swy par bille en la Chauncerie et fut dowe couendreit unqore qe vous fussez descharge.

Pass. Ele ne se puet nient pleindre par bille pur ceo qele nest nient du saunk celui de qy mort les tenemenz sunt en la garde le Roi.

Hoc est dictum secundum *Pass.* que si ele nest pas femme celui qe si soun baroun eust aliene tenemenz qil tient du Roi a un estraunge le

The Court ruled that the case should stand over till another day; and in the meantime word must be had with the King etc. And afterwards the King sent word that the case should be proceeded with.

Passeley. John of Gatton held these tenements of the King, and died etc. The King took them into his hand by reason of the infancy of Edmund, John's son. Edmund died while in the King's wardship, and the King assumed the wardship of his two infant sisters by reason of their infancy etc. as above. Now we are the guardians of the lands of both the heirs, though we are the guardians of the body of but one of them; and your warrant for proceeding with this case supposes that we are only guardians of the land of one of the heirs. Consequently we do not see that you have any warrant for proceeding in this case where the writ runs 'to the guardians of the land and of one of the heirs.'

Friskeney. It may be that you are guardian of the land which is their heritage in common, and of the body of one of the heirs.

Passeley. Then her writ ought to run thus: 'to the guardians of the lands and of the heirs' and not 'of one of the heirs'; for we are guardians of the land of both one heir and the other. And therefore we doubt whether, if we rendered the dower when it is claimed from us as being guardians of one of the heirs only, we should be allowed to deduct anything from the full rent payable to the Exchequer, because that we are guardians of both the one and the other and of their heritage.

Spigurnel J. Though you were willing to render we should not permit it from consideration of the King's estate. Further than this, the King has sent us word to go on with the matter and do what is right and have the land valued. And when the land is valued the value will be certified to the Chancery, and there will Maud get her dower, and allowance will be made to you in the matter of rent in proportion to the diminution of your holding.

Friskeney privately. The writ is good enough; and if it ran 'to the guardians of the land of one of the heirs' it would be worthless.

Spigurnel J. If she had sued by bill in Chancery[1] and had got her dower, it would still have been necessary for you to be discharged [of liability to pay the full rent].

Passeley. She could not make plaint by bill because she is not of the blood of him through whose death the tenements are in the wardship of the King.

It was said on *Passeley's* authority that unless she were the wife of a husband that had alienated to a stranger the tenements he held from the King, then, her husband being dead and the tenant being dead,

[1] That is by petition to the King, the lands being in the King's hand.

baroun deuie le tenaunt deuie la femme ne puet rien demaunder en tiel caas soun dowere par bille. Et est causa ut credo pur le voucher.

Ad alium diem *Pass.* Un Johan de Gattone feut seisi de mesmes ceux tenemenz auoit deus fiz Robert le puisne et Hamoun leigne. Hamoun apres la mort Johan entra come fiz et heir et morust seisi apres qy mort le Roi par le nounage Edmund de Gattone fiz Hamoun seisi les tenemenz etc. Robert come uncle lenfaunt etc. frere Hamoun se voleit auer abbatu et ne fut point suffert et autre seisine nauoit.

Stonore. Taunt amount nostre baroun ne fut unqes seisi et issi etc.

HERUI. Il unt fet lour estat si cler et si feite ouesqz ceo qe les tenemenz sunt en la main le Roi qil est bon qe vous diez asqune chose a moustrer coment vostre baroun auoit tiel estat qil vous pout dower.

Stonore. Johan de Gattone dona a Robert nostre baroun et a ses heirs etc. et puis nous esposames etc. et issi fut il seisi qe dower nous pout prest etc.

Pass. Unqes seisi prest etc.

[1]WYLMINTONE *v.* BROCKHELLE.

Dowere. [2]Une Maud[2] qe fut la femme Johan de Welyngtone[3] porta son bref de dowere vers Willem de Brokhulle et Margaret sa femme qi voucherent a garrantie James de Bourne qi garrantit et revoucha[4] Voucher. Willem de Brokhulle soul qi vint en court et [5]entra en la garrantie[5] et pleda ouesqe la femme et dit qe son baroun fut unqes seisi [6]en son demene com de fee[7] issint [8]qele deit dowere auer[9] pus les esposailes issint[10] qe dowere la pout [11]et le reverse troue pur enqueste.[12]

HERUY. Est Willem de Brokhulle seisi des tenemenz qe furent al baroun [13]la femme.[13]

[14]Dit fut[14] qe oyl.

HERUY. Mes il nest pas heir du baroun.[15]

Judicium. Purquei agarde la court qe la femme recouere sa demande vers Willem de Brokhulle et Margaret sa femme et Willem et Margaret vers James a la value et James a la value vers Willem de Brokhulle.[16]

[1] Reported by δ (twice), ϵ, ζ, λ. Names of the parties from E.R. Text from δ collated with the others. The subsequent references to δ are to the second version. [2–2] Marie δ. [3] W. δ; Walingtone ζ. [4] voucha outre ϵ; ζ *adds* outre. [5–5] garrantit ζ. [6–9] λ *omits.* [6–12] si qe dower la pout issi qe enqeste se joynt entre els par laqele trove fust qe son baron fust seisi pus les esposailes qe dower la pout ϵ. [7] δ and ζ *add* pus les esposailes. [8–10] δ *omits.* [8–12] &c. pur enqueste se ioint entre eux par la quele troue fut qe son baroun fut seisi qe dower etc. ζ. [8–16] δ *omits.* [11–12] pur quei enqueste se joynt entre eux par laquele troue fut qe son baroun fut seisi etc. δ: issi qe enqeste se joynt entre els par laqele trove fuet qe son baron fust seisi pus les esposailes qe dower la pout λ. [13–13] Maud ϵ; λ *omits.* [14–14] La femme dit ζ. [15] λ *adds* fut dit qe noun. [16] λ *adds* et Willem en la merci.

she could not, in the present circumstances, claim her dower by bill. And this was the reason, I believe, for the voucher.

Upon another day *Passeley* said: One John of Gatton was seised of these same tenements. He had two sons, Robert the younger and Hamon the elder. After John's death Hamon entered as son and heir, and died seised. After his death the King, by reason of the infancy of Edmund of Gatton, Hamon's son, seized the tenements etc. Robert, Hamon's brother, as uncle of the infant, tried to abate himself upon the land, but he was not permitted to do this; and he had no other seisin.

Stonore. That amounts to saying that our husband was never seised, and so etc.

STAUNTON J. They have shown their estate so clearly and made it so consistent with the fact of the tenements being in the King's hand that you must give some proof that your husband had such an estate as to entitle you to dower.

Stonore. John of Gatton gave to Robert our husband and to his heirs etc. and afterwards we married etc. and so he was sufficiently seised to entitle us to dower. Ready etc.

Passeley. Never seised. Ready etc.

WELLINGTON *v.* BROCKWELL.

One Maud that was wife of John of Wellington brought her writ of dower against William of Brockwell and Margaret his wife, who vouched to warranty James of Bourne. He warranted and vouched over William of Brockwell solely. William came into Court and warranted, and pleaded in chief against the demandant. He said that Maud's husband was never seised in his demesne as of fee after the marriage so that dower was chargeable and so that Maud was entitled to it. But the contrary of this was found by the inquest. Dower. Voucher.

STAUNTON J. Is William of Brockwell seised of the tenements which were held by Maud's husband?

It was answered that he was.

STAUNTON J. But he is not the husband's heir.

Whereupon the Court gave judgment that the wife should recover her demand against William of Brockwell and Margaret his wife; and that William and Margaret should recover the value from James, and James from William of Brockwell. Judgment.

Jugement en bref de dower.

[1]Et nota qe en chesqun cas qant femme porte bref de doeyre e le tenant voche a garantir leyr le baron qe en tel cas le juggement serra qe la femme recovere vers le garantor e le tenant tendra en pees mes si le tenant voche un estrange al baron le juggement serra qe ele recovere vers le tenant e le tenant vers le garantor ut patet hic supra.[2]

Note from the Eyre Roll.

William Brockwell's plea, upon which issue was joined, was :—Quod predicta Matillda non debet inde dotem habere quia dicit predictus Johannes quondam vir etc. die quo ipsam desponsavit nec unquam postea fuit in seisina de predictis tenementis unde etc. ut de feodo ita quod ipsam inde dotare potuit. Et de hoc ponit se super patriam.

The verdict was :—Quod predictus Johannes quondam vir etc. postquam

[3]NOTA.

Dower si le tenant voche autre[4] qe leyr[5] e ele recovere ele recovera vers le tenant mes si leyr seit voche ele recovera vers leyr[6] e le tenant tendra en pees.

Nota qe la ou femme porte soun bref de dowerre et le tenaunt vouche a garauntie un autre qe le heir le baroun la femme de qi dowement ele demaunde si[7] la femme rescovere [8]ele recovera[9] vers le tenaunt et le tenaunt vers le garaunt. Teste en le dowerre porte vers William de B. par *Cant.* quia non est heres viri sui et sil fut heir le baroun ele rescovereit[10] vers le vouche etc.

[11]ANON. *v.* ANON.

Dowere.

Un Alice porta soun bref de dowere uers un Johan et demaunda la tierce partie des certeins tenemenz del dowement un Geffrei soun baroun.

[1–2] *from* ϵ. *The other texts have, with the variations noted :* Et nota (par Sire Heruy) [λ *omits words within brackets*] qe si W. de B. tenant par sa garrantie eust este heir le baroun et eust eu assez des tenemenz qe furent a son baroun donqe ust la femme recouvery vers le garrantor [δ (*first version*) *alone has* tenant] et le tenant eust tenu en pees etc. [3] Note from *a*, *aa*, β. Text from *a* collated with β. Note from β collated with *aa*. [4] *aa adds* agarauntir. [5] le bref *aa*. [6] lui *aa*. [7] A word of one or two letters has been erased here. [8–9] *from* β ; *a omits*. [10] recovera β. [11] Reported by *a* and δ. Text from *a* collated with δ.

And note that in every case when a wife brings a writ of dower and the tenant vouches the husband's heir to warranty the judgment shall be that the wife recover against the guarantor, and the tenant remain in peace. But if the tenant vouch a stranger to the husband, then the judgment shall be that the wife recover against the tenant, and the tenant against the guarantor ; as appears in the case above. Judgment in writ of dower.

Note from the Eyre Roll—*continued.*

predictam Matilldam desponsavit fuit seisitus de predictis tenementis cum pertinenciis ut de feodo ita quod ipsam inde dotare potuit.

The judgment was :—Quod predicta Matillda recuperet inde seisinam suam versus predictos Willelmum filium Willelmi et Margaretam et quod iidem Willelmus et Margareta habeant de terra predicti Jacobi etc. et quod idem Jacobus habeat de terra predicti Willelmi in loco competenti ad Valenciam etc. Et predictus Willelmus in misericordia etc.[1]

NOTE.

Dower. If the tenant vouch another than the heir and the demandant recover she will recover against the tenant ; but if the heir be vouched she will recover against the heir, and the tenant will hold undisturbed.

Note that when a wife brings her writ of dower, and the tenant vouches to warranty another than the heir of the husband of the wife that is demanding the dower due from him, if the wife recover she will recover as against the tenant, and the tenant as against the warrantor. This is stated on the authority of *Cambridge* in the case of dower brought against William of B. because the vouchee is not her husband's heir ; and if it be the heir of the husband [that is vouched] then she will recover against the vouchee.

ANON. *v.* ANON.

A certain Alice brought her writ of dower against one John and demanded the third part of certain tenements of the endowment of one Geoffrey her husband. Dower.

[1] *m* 32*d*.

Pass. Geffrei nauoit unqes rien en ceux tenemenz si noun ioint oue un Nichole pur quei [1]dowere etc.

Et les autres le reuers.[1]

Pass. [2]dit qe un A. dona ceux tenemenz oue autres a Geffrei et B.[3] iointement et auaunt la purpartie fete G. dona sa purpartie a T. entre les queux T. et lauauntdit B.[4] la departie se fist dount T. lessa sa purpartie a W. de Derby[5].

Et pur ceo qe troue fut[6] qe G. ne fut paas soul seisi[7] qe dowere [8]la pout[8] et qe Johan uers qi le bref est porte nest paas tenaunt de cele partie des tenemenz qe G. baroun la femme aliena einz fut W. de Derby,[5] pur quei agarde fut qele ne preist rien par soun bref.

[9]Et sciendum quod Herui fut en[9] oppinioun qe si ele eust demaunde uers William de Derby[5] dowere des tenemenz qe soun baroun aliena nient countre esteaunt qe lalienacion fut fete deuant la departie[10] ele eust recouere dowere etc.

[11]GATTON *v.* GATTON.

De dote. Alice qi fut la feme Robert de Cattone porta son bref de dowere vers William le fiz Hamond de Cattone.

Wescote. Lenter de tenemens fut acun tens en la seisine J. de Cattone qi morust seisi en son demene com de fee qi auoit ij. fiz Hamond pere William uers qi etc., et Robert baron Alice etc. Apres la mort J. entra Hamond com fiz et heir et eyne et morust seisi apres qi mort se abati et William ly ousta jugement si de cel estat etc.

Stonore. Robert nostre baron de qi dowement etc. fut seisi en son demene com de fee prest etc.

Spigurnel. Il vnt conu un estat a Robert qe vous donne pas dowere sil diont veir pur qei zeet a un de ceo ou mostret qe vostre baron auoit altre estat.

Stonore. Hamond pere William enfeffa Robert de qi etc. de meme lez tenemenz par qel feffement il fut seisi en son demene com de fee si qe etc. prest etc.

Et les altres le reuers et sciendum qil vst este folie qil ne fut vnqes seisi si qe etc. pur ceo qe acune gent entendant qe si sa seisine vst este troue le qel qele fut torsenouse ou droit icele etc. unde questio etc.

[1–1] il ne la poeit la dowere Alice le reverse. Ideo ad patriam *δ*. [2] Lenquest vint et *δ*. [3] un E. *δ*. [4] G. *δ*. [5] A. *δ*. [6] *δ adds* par enqueste. [7] *δ adds* issi. [8–8] etc. *δ*. [9–9] Et fet a savoir de ceo *δ*. [10] purpartie *δ*. [11] Reported by *η* only.

Passeley. Geoffrey never had aught in these tenements save jointly with one Nicholas, wherefore dower etc.

And the other side joined issue.

Passeley said that one A. gave these tenements together with others to Geoffrey and B. jointly ; and before a division was made G. assigned his share to T. ; and between these two, T. and the aforesaid B., the tenements were divided. T. leased his share to W. of Derby.

And because it was found that G. was not solely seised so that dower accrued, and that John, against whom the writ was brought, was not tenant of that parcel of the tenements which G., the wife's husband, alienated, but that W. of Derby was tenant, judgment was given that Alice take naught by her writ.

And you shall know that STAUNTON J. was of mind that if Alice had claimed from William of Derby dower of the tenements that her husband alienated, notwithstanding the fact that the alienation was made before the division of the tenements, she would have recovered dower etc.

GATTON *v.* GATTON.

Alice that was wife of Robert of Gatton brought her writ of dower against William the son of Hamon of Gatton. Dower.

Westcote. The whole of the land was at one time in the seisin of J. of Gatton. He died seised in his own demesne as of fee, leaving two sons, Hamon, the father of William against whom etc., and Robert, the husband of Alice etc. After John's death, Hamon entered as elder son and heir, and died seised. After his death [Robert] abated himself [on the lands] and William ousted him. Judgment whether by such an estate etc.

Stonore. Robert our husband, of whose endowment etc., was seised in his demesne as of fee. Ready etc.

SPIGURNEL J. They have laid an estate in Robert which does not entitle you to dower, if what they say is true. Consequently you must either admit what they say, or prove that your husband had some other estate.

Stonore. Hamon, that was William's father, enfeoffed Robert, of whose etc., of these same tenements ; and by that enfeoffment Robert was seised in his demesne as of fee, so that etc. Ready etc.

And the other side joined issue. And it is to be noted that the claim was a wild one, for Robert was never so seised as to etc. And some were of opinion that whether his seisin had been found tortious or good yet Alice etc. But of this there is a question etc.

[1]NOTA.

De Dote versus custodem ubi disclamat.

En [2]un bref de dowerre porte vers un gardeyn [3]de la terre [4]leyr B.[5]

Laufer [6]pur le gardeyn[6] dist qe il ne avoit rien en la garde[7] ne rien ne clama. Juygement du bref.

Pass.[8] vous aviez[9] la garde e [10]meynaveristes la[10] terre cum gardeyn le jour du bref purchase prest &c.

Laufer nous [11]ne clamoms rien[11] juygement &c.

Spigurnel [12]vous nestes pas en tel cas cum si ele portast [13]bref vers[13] vous cum vers[14] tenant du franctenement qar la [15]porroiez vous desclamer e abatre son bref mes si ne serrez mye en cest cas.[16]

Hervy cest un bref de doeire unde nichil habet par quei vous nel abaterez point si lejerement &c.

Laufer [17]qe il ne avoit rien en noun de garde &c. prest &c.

Pass. qe[18] il avoit le garde[19] le jur du bref purchace prest &c.

[20]Ideo &c.[20]

DROIT.

[21]SIRE HENRY DE COBEHAM *v.* SIRE WILLIAM DE CREIEI.

De placito ajorne en eire Scrope dit qe le demandant peut suire le record qaunt il vodra mes le tenant serra garny.

Sire [22]Henry de Cobeham[23] de Roudale[24] porta bref de droit vers Sire Willem[25] de Creiei[26] & avoient plede en Baunk & avoient jour en eire &c. par qey Sire Willem[27] se profri[28] a la barre[29] & Sire Henry[30] vynt & dit qil nust mie siwy le record del plee par qey les justices agarderent qe Sire Willem alast a dieu ore mes ils ne poeient mie agarder qil alast [31]a dieu[31] saunz jour qar ils disoient qe tut leire nest qe un jour & pur ceo il peut sure son record qant il vodra durant leyre mes ils disoient qe le tenant serroit garny qant le record vendroit &c.

[1] Note from ϵ, ζ, λ. Text from ϵ collated with ζ and λ. [2] Nota qe λ. [3–5] λ *omits.* [4–5] et del heir un P. ζ. [6–6] ζ, λ *omit.* [7] λ *adds* de la terre le heir. [8] *Ston.* λ. [9] averez ζ; avet λ. [10–10] la maineovere de sa ζ; le meinhoure de sa λ. [11–11] desclamans en la garde ζ. [12–16] Mes ci si ne fre vous mi λ. [13–13] un precipe quod reddat &c devers ζ. [14] devers ζ. [15–16] punez et abatre le bref mes auxi ne freez mie en ceo cas ζ. [17] λ *adds* tendi laverement ut supra; ζ *adds* joint laverement. [18] ζ, λ *omit.* [19] λ *adds* ut supra. [20–20] Sic ad patriam &c. ζ, λ. [21] Reported by γ, δ, ϵ. Text from γ collated with δ and ϵ. The marginal note in ϵ is: 'La ou le demandant se proffry al primer jour del Eyre en bref de droit e navoit suy nul record du Bank. [22–23] Johan de C δ. [23–24] δ *omits.* [25] B. δ. [26] Creye ϵ. [27] W. de C. δ. [27–28] δ *omits*; de Creie vint ϵ. [29] ϵ *adds* e se profri. [30] J. δ; δ *adds* fut demande qi; ϵ *adds* fust demande qy. [31–31] ϵ *omits.*

NOTE.

When writ of dower is brought against a guardian that disclaimed.

In a writ of dower brought against a guardian of the lands of B.'s heir.

Laufer, for the guardian, said that he had naught in the wardship, and claimed naught. Judgment of the writ.

Passeley. You had the wardship, and you were managing the land as guardian on the day of the purchasing of the writ. Ready etc.

Laufer. We claim nothing. Judgment etc.

Spigurnel J. You are not in the same position as if she had brought her writ against you as tenant of the freehold. In that case you might have disclaimed and so abated her writ. But you are in different case here.

Staunton J. This is a writ of dower; and the defendant says he has naught in the land. But you will not abate the writ so lightly as that.

Laufer [then said] that he had naught by way of wardship etc. Ready etc.

Passeley. He had the wardship on the day the writ was purchased. Ready etc.

So to a jury.

RIGHT.

COBHAM *v.* CRAY.

In a plea adjourned to the Eyre Scrope J. says that the demandant can sue out the record when he will, but the tenant will have notice given to him.

Sir Henry Cobham of Rowdale brought a writ of right against Sir William of Cray. The case was commenced in Bank and then adjourned to the Eyre etc. Whereupon Sir William tendered himself at the bar, and Sir Henry came and said that he had not sued out the record of the plea; thereupon the Justices ruled that Sir William might go away for the present, but they could not rule that he might go away *sine die*; for, said they, the whole Eyre counts but as a single day, and therefore [the demandant] may sue out his record when he will during the Eyre; but, they added, the tenant will have notice given to him when the record comes etc.

[1]NOTA.

Tot le Eyre nest qun jour.

Droit. En un bref de droit en le eyre qe vynt hors de court etc. le demandant vynt a la barre quant il fut demande. Demande fut par la court sil auoyt suy le record etc. il dit qe noun, pur quey le tenant pria iugement etc.

Spigurnel. Si agarde la court qe vous ne pregnez rien etc. et le tenant a dieu saunz jour.

Jour. Vide infra qe tot le Eyre nest qun jour. E pur ceo qe tut le eyre fut com un iour les justices accorderent qe le demandant deuereit swer son record sil vousist etc. et disaint al tenant qil feit son attorne pur tuz auentures issi qil fut totuers prest etc. pur ceo qil nauoynt nul power de agarder qe il alast saunz iour.

[2]NOTA.

Nota qen eyre partie ne doit mie estre agarde saunz jour pur ceo qe tout leire est un jour.

[3]WYBERD ET GILBERT *v.* BATHONE.

De recto en gavelkind jurez furent eslu de grant assise et les chivalers furent esluz com en grant assise.

Adam filius Willelmi Wyberd Stephanus filius Simonis Wybert & Henricus frater ejusdem Stephani [4]Thomas filius[4] Thome Gilbert[5] petunt versus Walterum[6] de Bathone[7] ii. mesagia & lx.[8] acras terre cum pertinentiis in Ytham[9] ut jus & hereditatem suam &c. que tenementa predictus Walterus[10] eis injuste deforciavit per breve de recto quidam[11] Prior ecclesie Christi Cantuarie[12] capitalis dominus feodi istius remisit[13] domino regi [14]judicium curie[14] &c. & [15]ipse Adam[15] & alii dicunt [16]quod quedam Margareta antecessor &c. fuit seisita[16] de predictis tenementis in Dominico[17] ut de feodo & jure tempore pacis tempore[18] regis nunc capiendo inde expletias &c.[19] & de ipsa Margareta descendit jus [20]&c. quibusdam Willelmo[20] Simoni Laurencio et Thome ut filiis et heredibus

[1] Note from *κ*. [2] Note from *α*, *αα*, *β*. Text from *α*. [3] Reported by *γ*, *δ*, *ϵ*. Text from *γ* collated with the others and with E.R. [4–4] T. filius Laurencii Wyberd *δ*, E.R. [5] Wyberd *ϵ*, E.R. [6] Willelmum *δ*. [7] B. *δ*. [8] ix *δ*. [9] I. *δ*; Ikham *ϵ*; Ykham E.R. [10] W. *δ*. [11] *from ϵ*; *γ has* quia. [12] Cancie *δ*. [13] *δ omits*. [14–14] in curia sua *δ*; inde curia sua E.R. [15–15] ipsi *δ*; unde iidem Adam, E.R. [16–16] quod Margareta et alii et antecessores fuerunt seisiti *δ*. [17] *ϵ adds* suo. [18] E.R.*adds* domini Edwardi patris domini. [19] *δ adds* ad valenciam &c. [20–20] purpartis sue *δ*.

NOTE.

The whole Eyre constitutes but a single day.

Right. In a writ of right that was remitted to the Eyre from the Court [of Common Bench] the demandant appeared at the bar upon being called. The Court asked him if he had sued out the record etc. and he said that he had not. Whereupon the tenant asked for judgment etc.

Spigurnel J. The Court gives judgment that you take naught etc. and the tenant is discharged from attendance *sine die*.

Day. See below that the whole Eyre is but one day. But because the whole Eyre is but as it were a single day the Justices allowed the demandant to sue out the record if he desired etc.; and they told the tenant to appoint an attorney against all chances, so that he should always be present etc. for they had no power to discharge him from attendance *sine die*.

NOTE.

Note that in Eyre a party cannot be allowed to go away *sine die*, for the whole Eyre constitutes but a single day.

WYBERD AND GILBERT *v.* BATH.

Of right in gavelkind, jurors of grand assize elected, and knights appointed as in a grand assize.

Adam, son of William Wyberd, Stephen, son of Simon Wyberd, and Henry, brother of the said Stephen, and Thomas, son of Thomas Gilbert, claim from Walter of Bath two messuages and sixty acres of land in Ightham together with the appurtenances thereof as their right and inheritance etc.; of which tenements the aforesaid Walter unjustly deforced them by a writ of right. A certain Prior of Christchurch, Canterbury, the chief lord of that fee, sent to our Lord the King the judgment of his Court etc., and that same Adam and the others say that a certain Margaret, ancestress etc., was seised of the aforesaid tenements in demesne as of fee and right in time of peace during the reign of the King that now is, taking therefrom esplees etc.; and from this same Margaret the right descended to a certain William, Simon, Lawrence and Thomas, that were her sons and heirs, seeing that these

eo quod tenementa sunt partibilia et de ipso Simone descendit jus propartis sue quibusdam Thome Willelmo Stephano et Henrico ut filiis et heredibus et de ipso Thoma quia obiit sine herede de se &c. descendit jus propartis sue &c. & sic quousque devenerit[1] ad Thomam filium Thome qui nunc petit similiter ut filio & heredi & quod tale sit jus suum offerunt &c. & Walter[2] venit & defendit jus [3]predicti Ade[4] & aliorum participium &c.[5] & seisinam predicte Margarete antecessoris &c. de cujus seisina &c. ut de feodo & jure &c. & totum &c. & ponit se in juratam loco magne assise [6]domini regis[6] capiendam [7]pro consuetudinibus[7] de Gavelkind &c. & petit recognicionem fieri utrum ipse majus jus habeat in predictis tenementis &c. seu predicti Adam & alii petentes coheredes &c. Dies datus est eis hic die [8]Jovis proxima post festum sancte Fidis Virginis & postea ad diem ipsam [9]Warinus de Waleys[10] Johannes[11] de Sandwico Johannes[12] de Septem Vannis[13] & Gildas[14] de Sellyng[15] iiij. homines[16] &c. qui in presentia partium predictarum elegerunt super sacramentum suum istos scilicet A.B.C.[17] &c. quousque habuerunt xii. [18]Et jurati[18] dicunt super sacramentum suum quod predictus Walterus[19] de B. [20]habet majus jus in predictis tenementis quam predicti Adam and alii petentes. Ideo consideratum est quod predictus Walterus[20] teneat predicta tenementa sibi & heredibus suis quieta de predictis Ada filio Willelmi Wybert & aliis petentibus & heredibus suis imperpetuum & iidem Adam & alii participes [21]& &c.[21] in misericordia &c.

[22]Nota qe[22] les iiij chivalers furent esluz par assent des parties & [23]dount[23] furent jurez qils elireient xvi. de chivalers & de seriauntz de eus & dautres qi meut seuent & voilent verite dire le quel le tenaunt avoit meur[24] droit en sa tenaunce de les tenementz &c. ou le demandant en sa demande peus ils alerent de la barre & les attornez dune part & dautre furent comaundez daler ovesqe eux & en presence des attornes ils elurent xij. a eux & la devant les iiij. chivalers deyvent les parties aver lour chalenges vers ceus qi sount eslus mes apres qil sount asentuz de hors il ne les purrount pas chalenger qaunt il vendrent a la barre de estre jure si il ne soit chalenge peus le assent acru &c.

[1] E.R. gives all the intermediate descents. [2] Willelmus δ. [3]–[4] suum δ. [3]–[5] eorum &c. ϵ. [6]–[6] δ *omits*. [7]–[7] secundum consuetudinem δ, E.R.; secundum consuetudines ϵ. [8]–[9] &c. ad quem diem ϵ. [9]–[10] Warrisius de Valoignes ϵ, E.R. [11] Nicholaus E.R. [12] Willelmus E.R. [13] δ *omits*; Vallis ϵ. [14] Isoldus δ; Gudo E.R. [15] Schelling δ; Shelingheld E.R. [16] milites ϵ. [17] δ *adds* et D; E.R. gives all the twelve names. [18]–[18] &c. qui ϵ. [19] Willelmus δ. [20]–[20] δ *omits*. [21]–[21] petentes ϵ. [22]–[22] et ϵ. [23]–[23] quant il furent esluz il ϵ. [24] majur ϵ.

tenements were partible.[1] The right to the share of the aforesaid Simon descended to a certain Thomas, William, Stephen and Henry, as his sons and heirs ; and the right to that same Thomas's share, because he died without heir of his body etc. descended etc., and so at length accrued to Thomas the son of Thomas, who now claims together with etc., as his son and heir ; and that their right is as set out they offer etc. And Walter comes and denies the right of the aforesaid Adam and the other co-demandants etc. and the seisin of the aforesaid Margaret their ancestor etc. of whose seisin etc. and all else etc. and he puts himself upon a jury to be elected to serve as a grand assize of our Lord the King according to the customs of Gavelkind etc., and he asks that they shall make recognition whether he himself have the greater right in the aforesaid tenements etc. or the aforesaid Adam and the other coheirs claiming with him etc. A day was assigned to them here, the Thursday next after the Feast of St. Faith the Virgin ; and afterwards on that same day Warresius of Valoignes, John of Sandwich, John de Septvans[2] and Gildas of Selling, being four knights etc., in the presence of the aforenamed parties upon their oath did choose these following, to wit, A., B., C. etc., up to the number of twelve. And the jurors upon their oath do say that the aforesaid Walter B. has a greater right in the aforesaid tenements than the aforesaid Adam and the other demandants have. So judgment is given that the aforesaid Walter hold the aforesaid tenements to himself and to his heirs for ever, undisturbed by the aforesaid Adam, son of William Wybert, and the other demandants and their heirs ; and that these same Adam and other demandants etc. be in mercy etc.

And you shall note that the four knights were chosen by the assent of the parties, and that these were then sworn to choose sixteen knights and serjeants of themselves and others, such as were best informed and would truth tell as to whether the tenant had better right in his tenancy of the tenements etc. than the demandant had in his demand. Then they withdrew themselves from the bar, and the attornies on both sides were bidden to go along with them, and in the presence of these attornies they chose to themselves twelve ; and there, before the four knights, the parties had the right to challenge such as were chosen ; but such as were unchallenged outside [the court] could not be challenged when they came to the bar to be sworn, if they had not been challenged immediately upon their selection.[3]

[1] *Sc.* by the customs of Gavelkind.

[2] So named from the winnowing-fans on his coat of arms.

[3] See *Introduction*, p. xviii.

[1]NOTA.

Nota defaute fet par femme durant la coverture etc.

Nota [2]que si un homme porte un *precipe*[3] vers un homme et sa femme si la femme face defaute tote la terre serra pris en le main le Roi et a jour de *cape* retorne la femme peut sauver la defaute par sa apparaunce pur ceo qe le demandant ne peut nule avauntage prendre par la defaute la femme kar ele ne se poent paas alaer durant la coverture par qei femme[4] peut en tiel caas fere defaute.

[5]NOTA.

Nota de joint feffement et de parsenerie.

En un *precipe quod reddat* porte vers plusours joint[6] tenaunz en parcenerie si lun moerge le bref se abbate. Mes en assise de novel diseisine porte vers joint tenauntz si loun moerge le bref ne se abbatera mie. Et en parcenerie en mesme le caas le bref se abatera pur ceo qen cas de parcenerie par la mort lun[7] lestat des autres est chaunge par les acresces lour purpartie et en cas de joint feffement nest pas lestat des tenaunz chaunge pur ceo qe chescun est tenaunt dil enter.

[8]NOTA.

Nota qe il ad difference ou il ad bref porte vers jont tenantz en parcenerie e vers jont tenaunts e vers parceners.

[9]NOTA.

Nota de noun suyte et [10]de recoverir[11].

Qe la ou treis portent lour *precipe quod reddat* vers treis tenaunz un ne suyt[12] point les treis tenaunz fount defaute lenter de la demaunde fut pris en la main le Roi et celui qe ne suyt[13] paas fut somons a suyre[14] sil voleit. A quel jour il ne vint pas. Il fut severe. Et les tenaunz fesoient defaute. Les deus demandauntz recoverirent[15] les deus parties &c. :—per STAUNTONE in eodem itinere.

[1] Note from *a*, *aa*, *β*, λ. Text from *a*, collated with *β* and λ. Head note from *β*. [2–3] en un *precipe* porte λ. [4] *β omits.* [5] Note from *a*, *aa*, *β*. Text from *a* collated with *aa* and *β*. [6] joint *is crossed out in aa*; jont *β*. [7] *β adds* lautre, *which the other texts omit.* [8] Note from *β*. [9] Note from *a*, *aa*, *β*. Text from *a* collated with *β*. [10–11] *from β*; etc. *a*. [12] swt *β*. [13] swi *β*. [14] seure *β*. [15] recoverent *β*.

NOTE.

Note as to default of wife during coverture.

Note that if a man bring a *precipe* against a man and his wife and the wife make default, the whole of the land shall be taken into the King's hand; yet the wife may save her default by appearance on the day of the return to the *cape*, so that the demandant can gain no advantage by the wife's default, for she is under no obligation during coverture; consequently in such case a wife may make default.

NOTE.

Note on joint-feoffment and parcenry.

In a *precipe quod reddat* brought against several joint-tenants in parcenry the writ abates if one of them die. On the other hand, in an assize of novel disseisin against joint-tenants the writ will not be abated by the deathof one of them. But in a case of parcenry such a death will abate the writ. And the reason is that in a case of parcenry the estate of each tenant is changed by the accretion of his share of the estate of a parcener that dies, whereas in a case of joint-feoffment the estate of the tenants is not changed, seeing that each of them is tenant of the whole.

NOTE.

Note that there is a difference when a writ is brought against tenants in parcenry and against joint-tenants and against parceners.

NOTE.

Of non-suit and recovery.

In a case where three demandants brought their *precipe quod reddat* against three tenants, one of which demandants failed to prosecute his suit, and the three tenants made default, the whole of the demand was taken into the King's hand, and he that failed to prosecute was summoned to prosecute if he so desired. Upon the day [when the summons was returnable] he did not appear, and his name was struck out [of the writ]. The tenants made default. The two demandants recovered two thirds etc. By STAUNTON J. in the same Eyre.

[1]HENRI LE SENESCHAL *v.* THOMAM DE ADESHAM ET ALIOS.

De recto porte devers plusours et pur ceo qil hi avoit variaunce entre le original et le *Pone* de un surnom le bref se abatyt.

Henri[2] le Seneschal porta soun bref de dreit vers Thomam de Adesham et Johan [3]le Bailiff[4] et plusours autres la parole fut mise devaunt justices a la sute le demaundant par une *pone* qe voleit Adresham.

Lauf. jugement de la variaunce kar le bref voet Adesham et le *pone* Adresham.

Pass. par cele variaunce ne poez nostre bref abbatre en le tut kar le bref voet et dount un Thomas tent[5] taunt et Johan taunt etc. [6]et un tiel[7] taunt etc. lui deforcient dount chescun puet aver several response auxi com en diverse *precipez* [8]et en[9] autres par quei tut fut il variant a un bref il ne se abbatra en dreit des autres.[10]

Ston. pur cest *pone* fut la parole ore einz remue qest par bref de dreit entre H. le Seneschal et Thomas de Adresham[11] la ou il ni ad nul tiel plai kar le bref original voet Adesham[12] qe ne suppose paas meisme la persone par quei il semble qe ceste court [13]nad paas garaunt[14] par cel *pone* qest vostre purchatz demene a tenir [15]le plee entre Thomas de Adresham etc[16].

Et par Spig. fut tut le bref abbatu *causa predicta.*

Note from the Eyre Roll.

That there were other variances between the original writ and the *pone* besides that mentioned in the text appears from the words of the exception as given by the Eyre Roll :—

Et Magister Thomas et alii veniunt et petunt auditum brevis originalis et *Pone* etc. quibus auditis compertum est quod in brevi originali continetur Magister Thomas de Adesham et in le *Pone* continetur Magister Thomas de Adersham. Et etiam in brevi originali continetur Thomas filius Thome

[17]ANON. *v.* ANON.

Bref de dreit abatu pur ceo qe le *pone* fut variaunt en taunt come le *pone* en primes suppose persone femele et a la fyn persone madle.

Un Robert porta soun bref de dreit vers une Alice la parole fut mise

[1] Reported by *a*, *aa*, *β* and λ. Text from *a* collated with *β* and λ. [2] Hervi λ. [3–4] *from β.* [5] *β omits.* [6–7] λ *omits.* [8–10] λ *omits.* [9] ove *β.* [11] Addisham λ. [11–12] λ *omits.* [13–14] eit garant a cesti play tenir λ. [15–16] etc. λ. [17] Reported by *a*, *aa*, *β*. Text from *a* collated with *β*. The note in *aa* is :—

Nota qe en un bref de dreit qe fust remue par un *Pone* fust abatu pur la variance entre le original et le *pone*. *β* has the same, with slight variations.

SENESCHAL *v.* ADESHAM AND OTHERS.

A writ of right brought against several is abated by reason of a variance in a surname in the *pone* from the same in the original writ.

Henry the Seneschal brought his writ of right against Thomas of Adesham and John the bailiff and several others. The action was brought before the justices by a *pone* sued out by the demandant wherein Thomas was described as of Adresham.

Laufer. Judgment of the variance. The writ says Adesham and the *pone* says Adresham.

Passeley. You cannot abate the whole of our writ by reason of this one variance, for the writ further says that one Thomas is tenant of so much, and John of so much, and a third person of so much etc., and consequently each deforciant may put in a several answer, as in the case of various writs or other pleadings ; and therefore though there may be a variance in the writ, that variance will not abate it so far as it applies to other people.

Stonore. The *pone* purports to move into this Court an action, commenced by a writ of right, between H. S. and Thomas of Adresham. But there is no such action, for the original writ says Adesham, indicating a different person. Consequently it seems that this Court has no authority under this writ, which is of your own purchasing, to hear an action between Thomas of Adresham etc.

And the whole writ was abated by Spigurnel J. for the reason aforesaid.

Note from the Eyre Roll—*continued.*

Chaldane. Et in le *Pone* continetur Thomas filius Thome de Chaldane. Et eciam in brevi originali continetur Thomas Seriaunt. Et in le *Pone* continetur Thomas le Seriaunt. Unde petunt Judicium de variacione brevis originalis et le *Pone.*

Et predictus Henricus non potest hoc dedicere. Ideo consideratum est quod predicti Magister Thomas et alii inde sine die et quod predictus Henricus nichil capiat per breve suum set sit in misericordia pro falso clamore etc.

ANON. *v.* ANON.

Writ of right abated because of a variance in the *pone,* which at the beginning supposed the party to be a female and at the end to be a male.

One Robert brought his writ of right against one Alice. The

devaunt justices [1]par un *pone*[2] qe voleit a la fin quod Alicia tunc sit ibi responsurus.

Laufare. jugement del *pone.*

Spig. pur ceo qe le *pone* en primes suppose persone femele et puis en la fin [3]parle responsurus[4] persone male[5] par quei il est variaunt en lui mesmes et auxi al original agarde etc. qe vous ne pernez rien par vostre bref per communem assensum iusticiariorum.

[6]NOTA.

De precipe quod reddat de rente.

Nota qe en un *precipe quod reddat redditum* ne gist paas vers le tenaunt pur ceo qil deit fere la rente au seignour et ne paas rendre mes si la rente soit fet a autre qe a soun seignour donqes gist le *precipe quod reddat* vers celi qe resceit la rente et noun paas vers celui qe fet la rente pur ceo qil nest mie tenaunt de la rente mes celui qe la resceit et pur ceo si la rente soit arere au seignour [7]destreynetz etc.[8]

[9]STATEBURY *v.* GREI.

[10]I.

De recto quod vocatur Presipe in capite ou fut dit qe les tenemenz ne furent tenuz de la corune mais dil maner de Eltham qest dil purchaz le Roy sur quei vint le baillif et chalenga la fraunchise pur ceo qe le maner fut en la main la Reine.

Johan de Stateburi porta soun bref de dreit vers William de Grei de certeinz tenemenz en Grei.

Laufare vint et tendi suite et dreine.

Pass. cest un *precipe in capite* et nous vous dioms qe les tenemenz ne sunt mie tenuz de la coroune einz du maner de Heltham qest le purchaz le Roi et est en la main la Reine et vous avez cy le baillif qe demaunde la court qe en cele court devient primes estre demaundez par le bref de dreit overt.

Hervi.[11] apres la bataille gage ou le chaumpions furent prest en la place a fere la bataille entre le Priour de Launcetone[12] et un autre en un

[1–2] *β omits.* [3–4] *β omits.* [5] madle *β.* [6] Note from *α*, *αα*, *β*. Text from *α* collated with *β*. [7–8] destreigne *β*. [9] Reported by *α*, *αα*, *β* and *θ*. Names of parties from E.R. [10] Text of (I) from *α* collated with *β*. The note in *αα* and *β* is :—Bref de dreit ou court fut demande e avoyt. [11] *β adds* Spig. [12] Lantony *β*.

hearing was moved before the Justices by a *pone* which runs towards the end '*quod Alicia tunc sit ibi responsurus.*'

Laufer. Judgment of the *pone.*

SPIGURNEL J. Because the *pone* supposes at the beginning that the party is a female, and then at the end a male, it is at variance with itself as well as with the original writ ; and the Justices are unanimous in ruling that you take nothing by your writ.[1]

NOTE.

Of a writ for rent.

Note that a *precipe quod reddat redditum* does not lie against a tenant, for he is bound to pay his rent to the lord, and not to render it ; but if the rent be payable to another than the lord, then in such case the *precipe quod reddat* lieth against him that receives the rent and not against him that pays it, for this one is not tenant of the rent, but he that receives it is ; and so, if the rent be in arrear to the lord, let him distrain.

STATENBOROUGH *v.* CRAY.

I.

In a writ of right called *precipe in capite* it was said that the tenements were not held of the Crown, but of the Manor of Eltham which is the King's peculiar ; whereupon the bailiff came and claimed the franchise because the manor was in the Queen's hand.

John of Statenborough brought his writ of right against William of Cray in respect of certain tenements in Cray.

Laufer comes and tenders suit and justifies.

Passeley. This is a *precipe in capite,* and we tell you that the tenements are not holden of the Crown,[2] but of the Manor of Eltham, which is the King's peculiar and is in the hand of the Queen ; and you have the bailiff here who claims the right of his court, for the tenements ought to be demanded in that court by a writ of right overt.

STAUNTON AND SPIGURNEL JJ. In a *precipe in capite,* after gage of battle and when the champions were in their places to wage battle

[1] For another exception based upon the alleged faulty grammar of a writ see *Year Books Series,* II, p. 128.

[2] Tenements claimed by a *precipe in capite* must be held in chief of the Crown. 'The writ called *Precipe in capite* shall be from henceforth granted to no person of any freehold whereby any freeman may lose his Court.' *Magna Carta,* 25 Edward I, cap. xxiv.

precipe in capite le chief seignour vint ove bref le Roi sur le graunt chartre qe les iustices poent[1] saver qe les tenemenz furent tenuz [2]en chef[3] de celui chief seignour qil eit sa court pur quei ne serra lour chalange ore cy alowe[4] qe la graunte chartre le voet mes pur ceo qe cesti bref vint hors du Baunk vous Johan ne aveez paas vostre record vous William alez a Dieu mes nemie saunz jour pur ceo qe Johan quaunt il porte soun recorde vous serrez garny.

[5]II.

Johan de Chanclie port son bref de droit vers William de Grey e contra de sa seisine demene seut et dereine.

Stonore les tenementz que sont en demande sont tenuz de la dame la reigne dangleterre parcel de manere de Eltham le quel ele ad du done le roie et ordine est per Stattute qe precipe in capite ne soit grante a nul home per quei frank home perdera sa corte veez e le bailiffe la reigne e prie la court sa dame &c.

Laufer a quoi vodrez vous qe le roie estreit.

Stonore au baillif la reine &c.

Spigurnel jeo ai vewe en plaie de sur precipe in capite qe la bataille fust joyntz e les champions et courecez de aler a la bataile sur ceo vint le seignur de qi les tenementz furent tenus e porta un bref forme sur le dit stattute quod si constare poterit eis quod tenementa predicta tenebantur de prefato domino quod tunc ulterius in placito predicto non procederent.

E pur ceo qe la partie demaundante ne poit ceo dedire tut le proces fut anenti.

[6]THOMAS CHICHE *v.* JOHN DE CANTERBURIE.

Thomas Chiche port son bref de droit vers John de Canterburie a les bailliffs de Canterburie le ploy remue per tout en Count et hors de Counte remue per *pone* devant les justices ad primam assisam.

Stonore. auter foiz mesme ceste bref vint cy eins par *pone* qe fut abatu par malveise forme par qi agarde fut qe Thomas ne prist rien jugement si a mesme le bref deviez ore estre respondu.

[1] purrunt β. [2–3] β *omits.* [4] bone β. [5] Text of (II) from θ.
[6] Reported by θ only.

on behalf of the Abbot of Launceston and another, the chief lord came with a writ from the King, in accordance with the Great Charter, informing the Justices that the tenements were holden of the bearer as chief lord, who ought to hold his court. So here, in accordance with the Great Charter, this challenge cannot hold ; and because this writ was removed out of Bank, and you, John, have not your record, you, William, may go away, but not *sine die*,[1] and when John brings his record you will be notified thereof.

II.

John of Cantley brings his writ of right against William of Cray, and counted of his own seisin, and tenders suit and justifies.

Stonore. The tenements now in demand are holden of the Lady of the King of England, being parcel of the Manor of Eltham which she has by gift of the King ; and the Statute provides that no *precipe in capite* shall be granted to anyone to the imperilling of the court of any franchise-holder. Here is the Queen's bailiff, and he prays the Court of his Lady etc.

Laufer. To whom do you want the King to estreat it ?

Stonore. To the Queen's bailiff etc.

Spigurnel J. I have seen in a case under a *precipe in capite*, when battle was joined and the champions were ready to fight, the lord of whom the tenements were holden intervene with a writ founded upon the said Statute to the effect that if he can satisfy the Justices that the tenements in dispute are held of himself they shall then proceed no further with the matter.

And because the demandant could not gainsay this the whole action was quashed.[2]

CHICHE *v.* CANTERBURY.

Thomas Chiche brings his writ of right against John of Canterbury before the bailiffs of Canterbury. The plea was removed by a tolt into the County Court, and from the County Court was removed by a *pone* before the Justices at their first assize.

Stonore. Before now this writ was moved here by a *pone* that was abated for informality, and the Court thereupon adjudged that Thomas should take naught. Judgment whether you can now be answered under the same writ.

[1] For the reason of this see *Cobham v. Cray*, p. 81.

[2] This report seems to be erroneous.

Spigurnel si le *pone* fut abatu loriginall fut amort come en cas si le *replegiare* soit remue par *pone* si le *pone* soit abatu homme ne purra mie recoverir al replegiare &c. et estre ceo la date de ceste bref le prove estre purchace avant qe le *pone* fust abatu et issint prove le bref mesme estre malvers.

Et pur ceo qil ne poeit ceo dedire le bref sabat par jugement.

ENGETTEMENT DE GARDE.

[1]KIRIEL *v.* SEGRAVE.

[2]I.

De ejectione custodie.

Johannes de Segrave[3] & Juliana uxor ejus summoniti fuerunt ad respondendum Nicholao Kiriel[4] quare cum custodia manerii de Swynfeld[5] usque ad liberam[6] etatem heredis Roberti Fyvens[7] ad eum pertineat eo quod predictus Robertus[8] de eo tenet[9] manerium idem[10] per servicium militare et Idem Nicholaus in pacifica seisina ejusdem custodie diu extiterit [11]predicti Johannes & Juliana predicto herede infra etate[12] existente ipsum Nicholaum a custodia illa violenter ejecerunt[13] & unde idem Nicholas dicit quod cum predictus Robertus pater &c tenuit de eo predictum manerium per homagium & fidelitatem & [14]servicia[15] v.*s.*[16] & medietatis unius feodi militis de quibus serviciis Nicholaus Kiriel[17] pater predicti Nicholai cujus heres ipse est fuit seisitus per manus predicti Roberti &c. idem Nicholaus qui nunc queritur post mortem predicti Roberti patris & fuisset in pacifica seisina &c de predicta custodia predicti Johannes & Juliana [18]die tali &c anno tali[19] &c[20] predictum Nicholaum a predicta custodia violenter ejecerunt unde dicit quod deterioratus est & dampnum habet &c [21]ad valorem c. *li.*[21] & inde [22]producit sectam[22] &c.

Et Johannes & Juliana per attornatum suum veniunt & defendunt vim & injuriam &c & dicunt quod predictus Nicholaus injuste queritur

[1] Reported by *α*, *αα*, *β*, *γ*, *δ*, *ε*, *ζ*, *η*, *θ*, λ. *ε* gives two reports, one in Latin, the other in Anglo-French. [2] Text from *γ* collated with *ε*, *η*, and E.R. Head note from *ε*. [3] Segave E.R.; *η adds* senior; E.R.; *adds* junior. [4] Tirel *η*. [5] Swynefel *η*. [6] legitimam *ε*, *η*, E.R. [7] Fynels *ε*; Fineys *η*. [8] *η omits*. [9] tenuit *ε*. [10] illud *ε*. [11]–[13] *η omits*. [12] etatem *ε*, E.R. [14]–[17] fidelitatem &c. *η*. [15] servicium *ε*. [16] feodorum E.R. [17] Tirel *η*. [18]–[20] ante festum exaltacionis sanck crucis anno Regis nunc secundo *η*. [19] *ε omits*. [21]–[21] *ε omits*. [22]–[22] *ε omits*.

Spigurnel J. If the *pone* were abated, the original writ was annulled; just as in the case where a *replegiare* is removed by *pone* and the *pone* is abated, recovery cannot be had by the *replegiare* etc. And further than that, the date of this writ proves that it was purchased before the *pone* was abated, and so proves that the same writ was bad.[1]

And seeing that the demandant could not gainsay this, the writ was abated by judgment.

EJECTMENT FROM WARDSHIP.

KIRIEL *v.* SEAGRAVE.

I.

Ejectment from wardship.

John of Seagrave and Juliana his wife were summoned to answer Nicholas Kiriel wherefore, seeing that the wardship of the manor of Swinefield until the lawful age of the heir of Robert Fyvens belongs to him, Nicholas, by reason that the said Robert held the said manor of him the said Nicholas by Knight's service, and that the said Nicholas was a long while in peaceful seisin of the same wardship, they, the said John and Juliana, forcibly ejected him the said Nicholas from the wardship aforesaid, the aforesaid heir being within age; touching which the aforenamed Nicholas says that the aforesaid Robert that was the father etc. held the aforesaid manor of him Nicholas by homage and fealty and the services of five shillings and of half a Knight's fee, of which services Nicholas Kiriel, the father of the aforesaid Nicholas, whose heir the same Nicholas is, was seised by the hands of the said Robert, and the aforesaid Nicholas who now makes plaint was after the death of the said Robert, father etc., in peaceful seisin etc. of the aforesaid wardship, when they, the aforesaid John and Juliana, upon such a day etc. and in such a year etc. forcibly ejected him the said Nicholas from the said wardship; by reason whereof he has suffered loss and is damaged etc. to the value of a hundred pounds; and of all that he produces suit etc.

And John and Juliana come by attorney and deny force and injury; and they say that the aforesaid Nicholas makes wrongful plaint in

[1] What value attached to the date upon a writ Ralph of Hengham tells us. 'Breuia nunquam facta erant quousque capta esset inquisicio set si clerici ignorabant de ponendo rectam datam propter hoc non fuerunt breuia viciosa quia in cancellaria et alibi in uno et eodem die unus clericus ponit unam datam et alius aliam set certum est quod breuia non exierunt antequam inquisicio capta et preterita fuisset.' *State Trials of Edward I.* (*Camden, 3rd Series* ix.) p. 35.

clamando custodiam predictam. Dicunt enim quod predictus Robertus pater &c tenuit predictum manerium de[1] Johanne de Sandwico avo predicte Juliane cujus heres ipsa est per servicium militare scilicet per homagium fidelitatem [2]& servicium ij.*s.*[3] & obiit in homagio ipsius Juliane per quod predicta custodia ad predictos Johannem & Julianam pertinet[4] & hoc parati sunt verificare.

Et predictus Nicholaus dicit quod predicti Johannes & Juliana ad verificacionem illam[5] admitti non debent.[6] Dicit enim quod alias in curia domini regis Edwardi patris[7] domini Regis nunc coram J. de Metingham[8] anno ejusdem &c xxij° levavit quidam finis inter ipsum Robertum Fyvens[9] patrem predicti Roberti &[10] predictum Nicholaum Kiriel[11] patrem predicti Nicholai[12] de predicto manerio cum pertinentiis per quem finem predictus Robertus pater[13] recognovit predictum manerium cum pertinentiis esse jus ipsius Nicholai patris &c. Et pro hoc &c Idem Nicholaus pater &c. concessit predicto Roberto predictum manerium cum pertinentiis tenendum eidem Roberto & heredibus de corpore suo exeuntibus de predicto Nicholao & heredibus suis imperpetuum & profert partem predicti finis qui[14] hoc testatur & de sicut virtute predicti finis qui in se plenum[15] gerit recordum liquere potest[16] quod predictus Robertus pater &c fuit tenens predicti Nicholai[17] de manerio predicto petit judicium.

Et predicti Johannes & Juliana dicunt quod qualiscumque finis inter eos levatus fuisset hoc eis prejudicare non debet dicunt enim quod diu ante levacionem predicti finis predictus Nicholaus pater &c. feoffavit predictum Robertum patrem &c de manerio predicto tenendo sibi & heredibus suis imperpetuum in feodo simplici de capitalibus dominis &c ratione cujus feoffamenti dominium dicti servicii [18]accrevit [19]antecessori predicte Juliane & heredibus suis[20] [21]tam quam[22] capitali domino[23] & petunt judicium si per aliquem finem postmodum levatum inter partes predictas extraneas dicte Juliane & in quo fine nulla testatur status permutacio a dominio suo predicto extraneari debent.[24]

Et Nicholas dicit quod predicte allegaciones predictorum Johannis & Juliane ei obesse non debent. Dicit enim quod predictus Robertus pater nunquam aliquem statum habuit in predicto manerio nisi virtute

[1] η *adds* quodam. [2–3] &c. η. [3] feodorum militis et dimidii E.R. [4] ϵ *adds* &c. [5] *from* ϵ; η *has* patrie; γ *omits*. [6] η *adds* in hac parte. [7] η *omits*. [8] ϵ *adds* &c.; η *adds* Justiciario domini Regis de Banco. [9] Fynels ϵ; de Funeys η. [10] η *adds* querentem. [11] de Tirel η. [12] η and E.R. *add* deforcientem. [13] ϵ and E.R. *add* &c. [14] que ϵ, E.R. [15] *from* ϵ; γ *has* placitum. [16] *from* ϵ; γ *has* patet. η and E.R. *add* Curie hic manifeste. [17] η *adds* patris &c. [18–20] &c. η. [19–22] ipsi Juliane ut consanguinee et heredi predicti Johannis de Sandwico E.R. [21–23] η *omits*. [24] debet ϵ; non debeant η.

claiming the aforesaid wardship. For, say they, the aforesaid Robert, father etc., held the aforesaid manor of John of Sandwich, that was grandfather of the aforesaid Juliana, whose heir that same Juliana is, by Knight's service, to wit, by homage, fealty, and rent-service of two shillings, and that he died in the homage of the said Juliana, whereby the aforesaid wardship appertains to the aforesaid John and Juliana; and this they are ready to aver.

And the aforesaid Nicholas says that the aforesaid John and Juliana ought not to be received to make such averment; for, he says, aforetime in the court of our Lord King Edward the father of our Lord the King that now is, before John of Mettingham, in the twenty-second year of the King aforesaid etc. a certain fine was levied between the aforenamed Robert Fyvens, the father of the aforesaid Robert, and the aforenamed Nicholas Kiriel, the father of the aforesaid Nicholas, touching the aforesaid manor and the appurtenances thereof; by which fine the aforesaid Robert the father acknowledged that the aforesaid manor together with the appurtenances thereof was of the right of that same Nicholas the father etc. And in consideration of this etc. that same Nicholas the father etc. granted the aforesaid manor together with the appurtenances thereof to the aforesaid Robert to hold to that same Robert and the heirs of his body of the aforesaid Nicholas and the heirs of his body for ever. And he produces a part of the aforesaid fine which testifies this; and since by virtue of the aforesaid fine that bears irrebuttable record he is able to prove that the aforesaid Robert, father etc., was tenant of the aforesaid Nicholas of the manor aforesaid, he asks judgment.

And the aforesaid John and Juliana say that whatever fine may have been levied between them such fine ought not to be to their prejudice; for, say they, long before the levying of the said fine the said Nicholas, the father etc., enfeoffed the aforesaid Robert, the father etc., of the aforesaid manor to hold to him, Robert, and to the heirs of his body for ever of the chief lords in fee simple etc. By reason of which enfeoffment the lordship of the said service accrued to the predecessor of the aforesaid Juliana and her heirs as to the chief lord; and they ask judgment whether by virtue of any fine subsequently levied between the parties aforesaid, to which the said Juliana was not privy, and in which there is no allegation of any change of estate, they ought to be ousted from their lordship aforesaid.

And Nicholas says that the aforesaid allegations of the aforesaid John and Juliana ought not to injure him; for he says that the aforesaid Robert the father never had any estate in the aforesaid manor unless it were by virtue of the aforesaid fine, and not at all by virtue of the

finis predicti & non per [1]ad feoffamentum[2] sicud iidem Johannes & Juliana dicunt & hoc [3]petit quod inquiratur per patriam.[4]

Et Johannes & Juliana similiter.

Ideo fiat inde jurata.

[5]Postea Nicholaus Kiriel non prosequitur[6] & ideo [7]ipse & plegii sui[8] in misericordia [9]pro falso clamore[10] &c.[11]

[12]II.

Nichol Kyriel[13] porta un bref de eieccion[14] de garde vers Johan de Segrave et Jullie sa femme et se pleint qe la ou il fut[15] seisi de certeinz tenemenz com en noun de garde par reson un W.[16] fitz et heir [17]R. de F.[17] qe [18]fut deinz[18] age etc. la vint[19] J. et Jullie et lengetterent etc.[20] a ses damages etc.

Pass. defendit et dit qil troua sa femme seisi et pus weiua[21] cel respons[22] et dit[23] qe Nichole Kyriel pere Nichole qi ore se pleint [24]tient ceux[24] tenemenz en ascun[25] temps de [26]Johan de Sandwyk[26] pere Jullie qi heir ele est [27]par homage[28] et[29] par services qe doune[30] garde le quel Nichole de ceux tenemenz enfeffa [17]R. de F.[17] a ly et a ses heirs a touz iours[31] pur quei par cel feffement fut il tenant du chief seignour du fee les queux services apres la mort Johan de Sandwyk descendirent[32] a Jullie com a fille et heir. La quele Jullie ensemble oue J. son baron apres la mort R.[33] lour tenant entrerent en ceux tenemenz en noun de garde [34]com bien lour leust[34] pour le noun age le auantdit W.[35] etc.

Malm. A [36]ceo respons[36] qe R.[33] tient de eux par tieu[37] service ne [38]deiuent il estre resceu qar autre fetz[39] se leua une fine deuant Sire [40]J. de M.[40] etc[41] lan xii.[42] etc entre Robert [43]Kynel et N.[44] pere N. [45]qore demande[46] qe lauantdit R. conust les tenemenz estre le droit N. com eux[47] etc. Et pur cele reconisance N. granta memes ceux tenemenz a

[1–2] aliquod simplex feoffamentum ϵ ; aliquod aliud simplex feoffamentum η, E.R. [3–4] &c. ϵ. [5–11] η *omits.* [6] prosecutus est ϵ. [7–8] ϵ *omits.* [9–10] ϵ *omits.* [12] Text of (II) from δ collated with ϵ, ζ, λ. [13] Kiriel ϵ ; de Kyriel λ. [14] engettement ϵ ; enjettement ζ. [15] fust ϵ. [16] B. ϵ. [17–17] Robert de Fynels ϵ ; Robert Normans ζ ; Robert de Fornaux λ. [18–18] fust de deinz ϵ. [19] vindrent ϵ. [20] a tort ζ, λ. [21] weyua ϵ. [22] et respondit outre ϵ. [23] dist ϵ. [24–24] tynt cels ϵ. [25] aukun ϵ. [26–26] Johan de Sandwyz ϵ ; Jon de Sandwich λ. [27–29] λ *omits.* [28] ϵ *adds* suite. [30] donent ϵ ; devient ζ. [31] ziours ϵ ; ϵ, ζ, λ *add* pus lestatut. [32] descendre deiuent λ. [33] Robert ϵ, ζ, λ. [34–34] λ *omits.* [35] B. ϵ ; ϵ, ζ, λ *add* sanz tort fere. [36–36] dire ϵ, ζ, λ. [37] tels ϵ. [38–39] deyvent il avenir qar altrefoiz ϵ ; pout il dire ζ ; deiuent il avener qar nous vous dioms autre fetz λ. [40–40] Jon de Metigham, ζ, λ. [41] λ *omits* lan xii. etc. [42] *from* ζ ; xxij. ϵ ; δ *omits.* [43–44] de Fynels pleyant &c et Nicole Kiriel ϵ ; N. de pleintif et Nichol Kyriel ζ ; de Fourneux pleintif et N. de Keriel λ. [45–46] qi se pleint &c. saver ϵ. [46] se pleint saver ζ ; λ *adds* saver. [47] cels ϵ ; ceus ζ.

enfeoffment, as is alleged by John and Juliana; and he asks that a jury may inquire into the matter.

And John and Juliana also ask this.

Therefore let a jury inquire of it.

Nicholas Kiriel was afterwards nonsuited; therefore he and his pledges are in mercy for false plaint etc.

II.

Nicholas Kyriel brought his writ *de ejectione custodiæ* against John of Seagrave and Julia his wife, and complained that whereas he was seised of certain tenements in the name of wardship by reason that one W. that was son and heir of R. of F. and was within age etc., they, the said J. and Julia had ousted him etc. Whereby he was damaged etc.

Passeley defends and says that John found his wife seised; but afterwards he abandoned this answer and said that Nicholas Kyriel the father of the Nicholas that now makes plaint formerly held these tenements of John of Sandwich that was the father of Julia, whose heir Julia is, by homage and services that entail wardship; and that the said Nicholas enfeoffed R. of F. of these tenements to hold to him and his heirs for ever. By reason of this enfeoffment R. became the tenant of the chief lord of the fee. After the death of John of Sandwich the right to these services accrued to Julia as his daughter and heiress. And this Julia together with J. her husband entered upon these tenements after the death of R. their tenant in the name of guardians, as was their undoubted right, in view of the infancy of the aforesaid W. etc.

Malmerthorpe. They ought not to be received to make this answer that R. holds of them by such service, for at an earlier time was a fine levied before J. of M. in the twelfth year etc., between Robert Kyriel and N. the father of N. the present demandant, by which the aforesaid R. acknowledged the tenements to be the right of N. as being etc. And in consideration of this acknowledgment N. granted these same tenements

R. de F. et ceux ly rendi a auer et tener a ly et a ses heirs [1]de son corps engendre[3] et [3]de tener de li et de ses heirs fesant pur ly et pur ses heirs a chef seygnur[4] les services duez etc. et demandoms jugement de pus qe nous avoms mis auant fine qest de Record qe tesmoigne qe R. tient de nous en fee[5] taille [6]auxi com la fine suppose[6] sil pout dire qe R. tient de eux par service[7] qe done garde [8]et mariage.[8]

Pass. Nous voloms auerer qe R. tient[9] de nous le iour de la conisance fet en fee simple pur quei nous demandoms jugement[10] si par nule conisance fete entre [11]R. et N.[11] pussent il nous de nostre seignourie oustre.

Malm. Nous vous dioms qil tient de nous en fee taille auxi com nous auoms dit et noun pas de[12] auxi com il dient prest etc.

Et alii e contra.[13]

[14]III.

Engettement de garde ou la partie pleda en le droit saunz respoundre a lengettement et fyn fut mis avaunt en deprouvant soun droit et fut resceu a laverrement countre la fyn pur ceo qe la fyn ne leva pas sur rendre.

Un bref dengettement de garde fut porte vers un homme qe vint en court et pleda au droit saunz respoundre a lenggetement et dit qe un Johan tint les tenemenz etc. par service de chivaler et enfeffa puis[15] Statut un Robert a tenir des chiefs seignourages etc.[16] le quel Robert morust en soun homage son heir deinz age et il entra sa garde com bien lui luist.

Fr. ceo ne poez dire qe veez yci fin tesmoigne qe Johan graunta les tenemenz a Robert et a les heirs de soun corps engendrez a tenir de lui mesmes etc. jugement si encountre la fin qest de record etc. al averrement devez avenir.

Pass. a la fin qe vous mettez avaunt nous ne sumes pas partie et[17] vous dioms qe lunge temps avaunt la date de la fin Johan enfeffa Robert a tenir des chiefs seignourages de fee issi qe a plus tost qe le fraunc tenement acrust al feffe un seignourie[18] acrust a nous qe nous sumes chief seignour etc. qela seignurie par fin subsequente entre moi et les persones[19] ne peut estre esteint[20] jugement etc.

[1–2] λ *omits.* [2] ϵ *adds* de ly et de ses heirs. [3–4] from ζ. δ *has* fesoint pur ly et pur ses heirs a tener de ly et de ses heirs; fesant pour ly et pour ses heirs ϵ. [5] *from* ζ; forme δ, ϵ. [6–6] λ *omits.* [7] services ϵ. [8–8] ϵ, ζ, λ *omit.* [9] ϵ *adds* cels tenemenz; λ *adds* ceuz tenemenz. [10] ϵ *adds* etc. [11–11] Nichole et Robert ϵ, ζ. [12] ϵ *adds* de els. [13] ϵ *adds* Ideo etc; ζ *adds* etc. [14] Text of (III) from α collated with β. The note in β is:—

Engetement de garde ou le defendant pleda le dreit saunz respondre a lengetement ou fin fut mis en barre.

[15] avaunt β. [16] du fee β. [17] β *adds* nous. [18] seignurage β. [19] personus β. [20] esteinz β.

to R. of F. and surrendered them to have and to hold to him and the heirs of his body begotten, to be held of him N. and his heirs, rendering therefor to the chief lord by himself and his heirs the services due etc.; and we ask judgment whether, seeing that we have produced the fine, that is of record, testifying that R. holds of us in fee tail, as the fine states, he can say that R. holds of them by services which involve wardship and marriage.

Passeley. We are ready to aver that R. held of us in fee simple on the day the acknowledgment was made; and therefore we ask judgment whether they can oust us from our lordship by any acknowledgment made between R. and N.

Malmerthorpe. We tell you that he holds of us in fee tail, as we have said, and not as they allege. Ready etc.

And thereupon was issue joined.

III.

Ejectment from wardship, where the defendant pleaded the right, without answering the allegation of ejectment, and where a fine was proffered in bar of the defendant's plea, and the defendant was received to aver that the fine was not levied upon the surrender.

A writ of ejectment from wardship was brought against a man that came into court and pleaded to the right without replying to the alleged ejectment; and he said that one John held the tenements etc. by knight's service, and, subsequently to the Statute,[1] enfeoffed one Robert to hold of the chief lord in fee, the said Robert dying in his homage and leaving an heir under age. And thereupon he entered into the wardship as he was well entitled to do.

Friskeney. That you cannot say; for see here a fine which testifies that John granted the tenements to Robert and the heirs of his body begotten to hold of himself etc. Judgment whether you can get to an averment in the face of the fine, which is of record.

Passeley. We are no party to the fine which you produce, and we tell you that a long time before the date of that fine John enfeoffed Robert to hold of the chief lord of the fee, so that immediately the freehold accrued to the feoffee a lordship accrued to us who are chief lord etc., for the lordship cannot be extinguished by a fine subsequently levied between me and the parties. Judgment etc.

[1] Sc. *Quia emptores*, 18 Edward I.

Fr. vostre averrement chiet en voydaunce de la fin qest de record jugement.

Pass. nous voloms averrer qe la fin fut leve puis le feffement fet a tenir de chief seignurage etc.

Fr. alaverrement ne devetz avenir *ut supra.*

Pass. la fin ne se leva mie sur le rendre par quei laverrement est assez resceivable.

Et pur ceo qe la fin ne voleit mutacioun[1] destat il fut resceu a laverrement en voydaunce de la fin par SPIG.[2]

ENTRE.

[3]ANON. *v.* ANON.

De ingressu. Un[4] R. porte bref dentre vers un C. &c dit en les queus [5]il ne avoit entre[6] si noun par une Alice a qi Johan [7]de B.[7] son cosyn[8] ceus tenementz[9] lessa a terme qe passe est.

Laufer[10] defend & dit sire nous[11] vous dioms qe apres la mort Jon qi ils dient qe fist le lees a Alice entrerent lour ij. fitz Daniel & Richard qar Jon esposa mesme ceste Alice &c. & enfefferent de mesme les tenementz mesme cele Alice & un Adam son baron qele prist apres la mort Jon & a lour heirs[12] jugement de bref.

Cant. taunt amounte [13]qe Alice nentra mie par Jon[13] a terme qe passe est quod sic prest &c.

Pass.[14] nous dioms qe Jon lessa les tenementz a Alice a terme & lesposa & engendra Daniel & Richard qi entrerent les tenementz apres la mort Jon pur ceo qe les tenementz furent Gavelekynd[15] & enfefferent Alice & Adam[16] son baron [17]ut supra[17] prest daverrer & si nous usoms chartre nous vous purrioms barrer &c.

Cant. & nous jugement del houre qe vous avez conu qe Jon lessa a Alice a terme [18]&c & ceo est[18] nostre accioun &c.

Fris. nest mie force qar le lees fust entre homme & sa femme [19]&c ut supra.[19]

SPIGURNEL [20]stant simul[20] qe Jon lessa a terme ut supra & qe Daniel & Richard fefferent ut supra par qey il ne peut nient estre le[21] travers de vostre bref.

[1] pas transmutacion β. [2] β *adds* etc. [3] Reported by γ, δ, ϵ, ζ, λ. Text from γ collated with the others. [4] *from* ϵ. [5–6] *from* ϵ; etc. γ. [7–7] Broun δ. [8] ϵ *adds* qy heir &c. [8–9] δ *omits*; les ζ. [10] *Pass* ϵ. [10–11] ζ *omits*. [12] ϵ *adds* e demandoms. [13–13] qe nentra mie par Alice qi tient ζ. [14] *Laufer* ϵ. [15] Gawulginde λ. [16] *from* δ, ζ, λ. [17–17] λ *omits*. [18–18] et λ. [19–19] ζ, λ *omit*. [20–20] il poent ester ensemble δ, ϵ, ζ; il put estre ressemble λ. [21] a δ.

Friskeney. Your averment is in avoidance of the fine, which is of record. Judgment.

Passeley. We will aver that the fine was executed subsequently to the feoffment to hold of the chief lord etc.

Friskeney. To that averment you ought not to get—*as above.*

Passeley. The fine was not levied upon the surrender, wherefore the averment is sufficiently receivable.

And because the fine did not allege any alteration of estate he was received by SPIGURNEL J. to the averment in avoidance of the fine.

ENTRY.

ANON. *v.* ANON.

A certain R. brings a writ of entry against one C. and says that C. has no entry into the tenements save by a certain Alice to whom her cousin, John of B., leased them for a term that has expired. Entry.

Laufer defends and says: Sir, we tell you that after the death of John, who, they say, granted the lease to Alice, the two sons of John and Alice, Daniel and Richard—for John married this same Alice—entered and enfeoffed of these same tenements this same Alice and one Adam, whom she took for husband after John's death, and their heirs. Judgment of the writ.

Cambridge. That is the same thing as saying that Alice did not enter by John for a term that has expired, as she did in fact enter. Ready etc.

Passeley. We say that John leased the tenements to Alice for a term and married her and begat Daniel and Richard, who entered upon the tenements after John's death, these tenements being Gavelkind; and they enfeoffed Alice and her husband—*as above.* Ready to aver; and if we had a charter we could bar you etc.

Cambridge. And we ask for judgment, seeing that you have acknowledged that John leased to Alice for a term etc., and from that fact we get our right of action etc.

Friskeney. The lease was invalid, for it was made by a man to his wife etc.—*as above.*

SPIGURNEL J. That Daniel and Richard enfeoffed as above is not inconsistent with John having granted a lease for a term, and so your writ is not traversed by such an allegation.

Cant.[1] jugement ut supra[2] del houre[3] qe vous avez conu[4] qe Jon lessa com nous avoms dit [5]a Alice[5] a terme qe passe est et ditez [6]qe peus ele[6] avoit fee et de ceo ne mustrez rien qe ceo tesmoigne. Jugement &c.

[7]Spigurnel sil deit qe ele avoit fee par le fet mesme cely Jon et ne moustrast rien qe ceo tesmoigne la demandez bien[8] jugement[9] mes ore dit il[10] qe ele avoit fee en les tenementz par le feffement Daniel et [11]son frere[11] qi sount autre persone et[12] ceo serra il bien receu daverrer.

Fris. cest lei.[13]

Cant. qe Jon lessa les tenementz a Alice a terme ut supra et qe Alice continua estat taunt qe ele vous lessa mesme les tenemenz prest &c.

Pas. qe Jon morust seisi de les tenementz en son demene come de fee et de droit et apres son deces entrerent Daniel et son frere et enfefferent Alice et[14] son baron ut supra [15]prest &c.

Alii e contra &c.[15]

[16]Lenqueste dit qele avoit fee du lesse Daniel et son frere et qele morust seisi par quei agarde fut qel ne prist rien par sa bref &c.[16]

[17]ANON. *v.* ANON.

Entre. Un Jon porta un bref dentre[18] & demanda certeins tenementz & dit en les qeux &c [19]le tenant ne avoit entre[19] si noun peus le lees qe un D. son auncestre fist a un C. [20]a terme qe passe &c.[20]

Le tenant voche a garantir un Adam.

Cant pur Adam nous garrantoms & dioms qe la ou vous portez ceo bref en le post vous le purriez aver porte en le *per* & dit coment &c & demande jugement de bref.

Dount dit fust par les seriaunz & par les justices qil avoit garanti & checune garantie est en le droit & lexcepcion qe vous metez avant est a la fourme de bref qest plus bas qe nest la garantie par quey vous ne poez ore avenir & fust agarde qil respondist outre & &c.[21]

[1] *Inham* λ. [1–2] ζ, λ *omit.* [2] δ *adds* mes. [2–3] de pus ζ ; λ *omits.* [3–4] λ *omits.* [5–5] *from* ζ. [6–6] qil λ. [7–9] δ *omits.* [8] vous ζ. [10] ele δ. [11–11] R. δ ; Ricard λ. [12] ζ *adds* a. [13] δ, ζ, λ *add* de terre. [14] δ, ζ, λ *add* Adam. [15–15] et sic ad patriam ζ. [16–16] *from* ζ. [17] Reported by γ, η, θ. Text from γ collated with η. [18] η *omits.* [19–19] *from* η. γ *has* &c. [20–20] *from* η. [21] In ϵ this paragraph is in the third person throughout.

Cambridge. Judgment *as above,* since you admit that John leased to Alice for a term that has expired as we allege; and you put forward no proof of your allegation that Alice subsequently acquired the fee. Judgment etc.

Spigurnel J. If he were to say that Alice had acquired the fee by this deed of John's and had offered no proof of that, you would rightly ask for judgment; but he says now that Alice acquired the fee by the enfeoffment of Daniel and his brother who are other parties, and of that he is entitled to make averment.

Friskeney. Such is the law.

Cambridge. Ready to aver that John leased the tenements to Alice for a term *as above*; and that Alice continued in possession of such estate until she leased these same tenements to you.

Passeley. Ready to aver that John died seised of the tenements in his own demesne as of fee and right, and that Daniel and his brother entered upon John's death, and enfeoffed Alice and her husband—*as above.*

And thereupon was issue joined.

The inquest found that Alice acquired the fee by the lease of Daniel and his brother, and that she died seised; and thereupon the Court gave judgment that the demandant should take naught by her writ etc.

ANON. *v.* ANON.

One John brought a writ of entry and demanded certain tenements, into which, he said, the tenant had no entry save by the lease which one D., John's ancestor, granted to one C. for a term that has expired. Entry.

The tenant vouched one Adam to warranty.

Cambridge, for Adam. We warrant and say that whereas you have brought your writ in the *post* you ought to have brought it in the *per.* And he explained why etc. and asked for judgment of the writ.

Then it was said by the Serjeants and by the Justices that Adam had warranted, and that every warranty is in the right; and the exception which *Cambridge* had taken went to the form of the writ, which is of a lower nature than the nature of warranty, wherefore he could not then succeed; and it was ruled that he must plead over and etc.

[1]AUNGELYN *v.* GUDDING.

[2]I.

Entre. [3]Symon Angelyn[3] porta breve dentre vers [4]Symond Godyn[4] et Mabile sa femme et fut le bref tiel Precipe Symoni Godyn[5] et Mabille uxori eius quod etc. reddant Symoni Angelyn[6] unum mesagium cum pertinenciis in Cantuaria quod clamat esse ius et hereditatem suam et in quod idem Symon et Mabilla non habent ingressum nisi per Adam de[7] S.[8] cui Rogerus [9]de Godyng[9] illut[10] dimisit qui illut[10] tenuit per legem Anglie post mortem Cristine Angelyn uxoris sue matris predicti Symonis Angelyn cuius heres ipse est.[11]

Ingham vous auetz dit du lees [12]qe un Roger[12] Godelyn qi tynt par ley[13] dengletere et vous nauetz pas dit qe le lees se fit en fee ou en autre manere et put estre qil lessa a terme de sa vie demene pur quei vous nauetz pas accion unqore et demandoms iugement. E dautre part vous nauetz pas dit de qi heritage il tynt qe put estre qil esposa autre femme et tynt de son heritage la qele ne vous donne nul accion iugement si a tiel bref deuetz estre respondu.

Spygurnel quant a ceo qe vous dites qil ne fit pas mencion de qi heritage il vous dit qe R.[14] les tynt etc. apres la mort sa myere qi heir il est issi suffit il qe il est heir pur quei il les tynt etc. E de ceo qe le bref ne fet pas mencion de la maner du lees il nad autre forme forsqe *cui illud dimisit* [15]sy noun[15] en cas de statut.

Fris. Sire ieo vous mostre qe cesti bref nest pas bon qar vous veetz bien coment le bref ne fet mencion en qel maner le lees se fit qe si Roger qi fut tenant par ley dengletere lessa a [16]terme de[16] sa vie demene et il soyt unqore en pleyne vie le heir nad mye accion et ouesqe ceo il prent son title de la seisine sa myere et qe le lees se fit par tenant par la ley dengleterre de qi seisine il ad naturelment son recouerer par le mortdancestre pur quei cesti bref est saunz accion.

Walyngford. lalienacion fet par le baron neo donne pas soulement accion qar put estre qe le lees se fit a terme de vie et unqore auereit le heir accion par cesti bref.

Spygurnel. Sy un home eit deuz recouerer il put prendre le qel qil voet et agarda le bref bon.

[1] Reported by *a*, *aa*, *β*, *γγ*, *δ*, *ζ*, *κ*, *λ*. [2] Text of (I) from *δ* collated with *ζ* and *κ*. Names of parties from E.R. [3–3] Simond Angeceline *ζ*; Symon Aungelyn E.R. [4–4] Simon Godinge *ζ*. [5] Godyng *κ*. [6] Aungelyn *κ*. [7] *κ omits*. [8] Stephan *ζ*. [9–9] Godemor *κ*. [10] illud *κ*. [11] *ζ adds* ut dicitur. [12–12] *from ζ*. [13] la courtasie *ζ*. [14] Roger *κ*. [15–15] sil ne seit *κ*. [16–16] *from ζ*.

ANGELYN *v.* GEDDINGE.

I.

Simon Angelyn brought a writ of entry against Simon Geddinge and Mabel his wife; and the writ ran in this wise: Command Simon Geddinge and Mabel his wife that etc. they render to Simon Angelyn one messuage with the appurtenances in Canterbury which he claims as his right and inheritance etc., and into which these same Simon and Mabel have no entry but by Adam of S. to whom Roger of Geddinge demised it, which Roger held it by the law of England after the death of Christina Angelyn his wife, that was mother of the aforesaid Simon Angelyn, whose heir he is. Entry.

Ingham. You have spoken of the lease granted by one Roger Geddinge who held by the law of England, but you have not told us whether the lease granted an estate in fee, or what other kind of estate. It may be that Roger leased for the term of his life, in which case no right of action can yet have accrued to you; and we ask judgment. And again, you have said nothing as to whose inheritance it is that he holds. It may be that he married a second wife, and that it is her inheritance of which he is tenant; in which case you would have no right of action. Judgment whether you ought to have answer to such a writ.

Spigurnel J. As to what you object about his not saying whose the inheritance is, he told you that R. was tenant thereof after the death of Simon's mother, whose heir Simon is, which is telling you quite sufficiently of whose inheritance he was tenant. And as to your objection that the writ does not disclose the nature of the lease, there is no other form of writ open to him than the *cui illud dimisit* in cases not specially provided for by the Statute.[1]

Friskeney. Sir, I contend that this writ is bad. You see that it says nothing at all as to the nature of the lease granted by Roger. Now if Roger, who was tenant by the law of England, granted a lease for the term of his own life and be still living the heir has no right of action. Further than that, the heir's title is derived from his mother's seisin, and the lease is granted by the tenant by the law of England, and the heir would naturally have his recovery on the seisin of his mother by a writ of *mortdancestor*. Hence this writ discloses no cause of action.

Wallingford. The alienation by the husband is not the only fact on which an action may be based, for though the lease were for a life-term the heir may also have a good action by this writ.

Spigurnel J. When a man has two recoveries open to him he may take either, as he wishes. And he ruled the writ good.

[1] *Sc.* Statute of Gloucester, cap. iii.

Note from the Eyre Roll.

The plea was:—Et Simon Guddyng et Mabilla per attornatum suum veniunt et dicunt quod predictum messuagium fuit in seisina cujusdam Ade Stephan qui obiit sine herede de se post cujus mortem predictum messuagium descendit quibusdam Willelmo et Johanni ut filiis et heredibus secundum consuetudinem de Gaulykende etc. Et de predicto Johanne de proparte sua descendit jus etc. quibusdam Ade et Roberto ut filiis et heredibus qui sunt infra etatem secundum predictam consuetudinem. Et vocant inde ad warrantiam predictos Willelmum Adam filios Johannis et Robertum

II.[1]

Entre per legem Anglicanam etc. ou le bref fut challenge pur ceo qe lalienacioun ne fit pas en fee sulom statut.

Simound Aungelein porta bref dentre vers Simond Goddinge et Mabile sa femme et counta qil navient si noun par A. iadys baroun un B. qi heir il est qe ceuz tenemenz tint par la [loi] dengelterre etc.

Frisk. Il prent soun title du lees le tenaunt par lei dengelterre mes du lees le tenaunt par la lei dengelterre ou a terme de vie nul actioun nest donee si noun en cas destatut de alienacioun fet en fee etc. et de ceo nad il mie[2] counte jugement.

Waling. Tenant a terme de vie puet aliener al terme de sa vie demene [3]ou daltri vie[4] ou a terme des aunz et si nest nule action donee taunt qapres sa mort et nous ne sumes pas en cas dalienacioun fest en fee.

Frisk. du lees estraunges ne peut homme title de comun dreit prendre kar actioun en tieu cas est done de la seisine launcestour de qi seisine il put aver bone title.

Spig. si actioun hi[5] soit donee en tiel caas par bref de possessioun de la seisine sa ancestour et sil peut elire de deus veies vous nel lui poez paas denier[6] a prendre quel veie qil voudra.

Malm. il print soun title de la seisine sa ancestour et coment qil counta du lees le tenaunt par la lei dengelterre et de ceo nensiut paas qil print de lui soun title.

Caunt. nous demaundoms la vewe et habuit.

[1] Text of (II) from α collated with β and λ. The note in β is similar to the one in α. The note in λ is :—Nota de jugement. Nota trove disseisor encontre son fait demeigne serra agarde a la prisone. [2] β *adds* mencioun fest en. [3–4] ou a terme dautri vie β; λ *omits.* [5] *sic*; β *omits.* [6] veer λ.

Note from the Eyre Roll—*continued.*

participes etc. et petunt quod predicta loquela remaneat usque etatem predictorum Ade filii Johannis et Roberti etc.

The replication was:—Et Simon Aungelyn dicit quod predicti Adam filius Johannis et Robertus sunt plene etatis etc. Secundum consuetudinem predictam etc.

The hearing was adjourned. Simon Aungelyn did not afterwards appear, wherefore judgment was given in favour of the Geddinges.[1]

II.

Entry by the law of England etc. where the writ was challenged because the alienation was not made in fee in accordance with the Statute.[2]

Simon Angelin brought a writ of entry against Simond Geddinge and Mabel his wife, and counted that they had no entry into the tenements but by A. that was formerly husband of one B., which tenements A., whose heir Simon Angelin is, held by the law of England etc.

Friskeney. He bases his title upon the lease granted by the tenant by the law of England. But no action is given in respect of a lease by the tenant by the law of England or for a life term, except in the case of the statutory exception of an alienation in fee etc., and of such he has made no allegation in his counting. Judgment.

Wallingford. A tenant for life can alienate for the term of his own life or for the term of another's life or for a term of years, and no action is given until his death. There is no question here of an alienation in fee.

Friskeney. A man cannot by common law get a title from the lease of a stranger, for in such cases he must base his right of action upon the seisin of an ancestor whose seisin affords him a good title.

Spigurnel J. If in these circumstances action by a possessory writ founded upon the seisin of his ancestor be maintainable, and if it be open to him to choose between two ways of proceeding, you cannot deny him the right of choosing which he will.

Malmerthorpe. He takes his title from his ancestor's seisin; and though he counts of the lease granted by the tenant by the law of England, it does not follow that he takes his title from him.

Cambridge. We demand a view. And he had one.

[1] *m.* 5*d.* [2] *Sc.* Statute of Gloucester cap. iii.

[1]ANON. *v.* STOKE.

De ingressu super diseisinam ou fet dauncestour fut mis avaunt ou clause de garauntie et fut dit qe le demaundaunt averreyt soun bref saunz respoundre al fet soun auncestour sed quere tamen.

Johan le fuitz Thomas de C. porta soun bref dentre vers Roger de Stoke et demanda xl. acres de terre &c. en les queux il nad entre si noun par Richard qe a tort et saunz jugement deseisi Thomas soun pere puis le terme.

Waling. Nous vous dioms qe Thomas vostre pere enfeoffa Richard nostre auncestour de mesmes les tenemenz par divers parceles par cestes chartres qe cy sount et obliga ly et ses heirs a la garantye. Et si un estraunge nous empledast vous nous garaunteriez. Jugement si encountre le fest vostre[2] &c.

Pass. Il diseisi Thomas nostre pere cum nostre bref suppose. Prest &c.

Waling. Nous avoms allegge le fet vostre auncestour qi heir vous estes en barre dactioun par quel fet vous nous devez garauntir &c. vers totes gentz. Jugement etc.

STANTONE. Vous ne poez ouster dil averement pur rien qe vous eetz[3] uncore dit.

Wescote. Si Thomas fust en vie et portast la assise et vous meissez avant cest fet ore ne serriez mie barrez qe lassise ne curreit. Auxi par de zea.

[4]NOTA.

[5]Bref dentre[5] ou heritage descente a v. parceners ij. devierent lez iii. demandent parmi le comune ancestour descendi a eux v. com a un heir pur ceo qe le ij. devierent &c. a eus iij. com a soeurs e [6]le tenant[6] dit qe la ou il disseient que le ij. devierent sanz &c. la une avoyt un fiz T. qui survesqui de qi nul mencioun ne firent en lour descente e demanda jugement de lour omission e le conte agarde bone.

[1] Reported by *a*, *aa*, *β*, λ. Text from *a* collated with the others. *aa and β have*: De ingressu super disseisinam ou le tenaunt mist avaunt le fest son pere par qe il ly voleit lier a la garantye et il dist qil voleit averer son bref: ou dist fust qil ne le ostereit de laverement ore ceo par statut. [2] *β adds* ancestor. [3] eyez *β*. [4] Note from *a*, *aa*, *β*. Text from *β* collated with the others. [5–5] Entre *aa*. [6–6] These words are repeated in the MS.

ANON. *v.* STOKE.

Entry *sur disseisine* where a deed of the ancestor that contained a warranting clause was produced and it was said that the demandant was entitled to his writ without answering his ancestor's deed. This, however, is questionable.

John the son of Thomas C. brought his writ of entry against Roger of Stoke, and demanded forty acres of land etc. into which he said that Roger had no entry save by Richard that wrongfully and in default of judgment had disseised Thomas that was John's father after the term etc.

Wallingford. We tell you that Thomas your father enfeoffed Richard our ancestor of these same tenements in different parcels by these charters which we now produce, and he bound himself and his heirs to warranty ; and if we were impleaded by a stranger you would warrant us. Judgment whether against your ancestor's deed etc.

Passeley. He disseised Thomas our father as our writ alleges. Ready etc.

Wallingford. We have produced in bar of your action the deed of your ancestor, whose heir you are, by which deed you are bound to warrant us against all people. Judgment etc.

STAUNTON J. You cannot oust him from his averment by anything that you have yet said.

Westcote. If Thomas were alive and brought the assize, and you put forward this deed, it would not prevent the assize being granted. And so here.

NOTE.

Writ of entry where a heritage descended to five parceners, of whom two died. The three demand [the land] as descended from a common ancestor to the five as to a single heir, and, since two were dead, to the three as sisters. The tenant says that whereas they say that two died without etc. one of them had a son T. who survived, of whom they made no mention in their descent, and he asked judgment of their omission ; but the counting was ruled to be good.

[1]ATTEWELLE *v.* COBHAM.

[2]I.

Entre sur la disseisine ou joinfeffement fut allegge en abatement dil bref et a tolir accioun de la moite pur ceo qe lun jointfeffe survesquit lautre issi qe tenaunce dil entere est done a celi qe sourvesquyt.

Un William atte Welle porta soun bref dentre vers Henri de Cobham et Johane sa femme et dit en les queux il ne ount entre si noun par Estephene de P.[3] a qi Juliane &c. se lessa &c. qi a tort etc. disseisi Thomas pere lavauntdit William qi heir &c.

Toud. La ou le bref voet qe Thomas fut seisi et disseisi par Juliane nous vous dioms qe Thomas navoit unqes rien en ceux tenemenz si noun ioint ove Juliane a eus et a lour heirs. Prest &c.

Westcote. Volez ceo pur respounse.

Toud. Nous le voloms pur bref abbatre et a tolir actioun de moite.

Spig. Est Juliane uncore en pleine vie.

Toud. Jeo nai qe pleder a ceo qe si lun joint feffe disseisi lautre il [4]navera fors accioun de[4] la moite.

Goldintone. La ou il sount ambedeus en pleine vie.

Toud. de la disseisin fet a launcestour si est cest actioun donee al heir ergo nient plus ne recovera il qe soun auncestour.

Spig. qui survesqui de Juliane et de Thomas.

Toud.[5] a ceo ne voillie respoundre qe tout survesqui ele si naveroit ele actioun fors de la moite.

Mutt. posom qe Juliane eut survesqui Thomas naveroit ele actioun dil lentier.

Westcote. votre respounse est nul qe tout fut il seisi issi qe Juliane fut joint feffe ove Thomas qe nous ne grauntoms mie et Thomas survesqui encore avereit il actioun dil entier.

Toud. pledez a ceo.

Pass. la ou homme et sa femme sunt joint feffez et le baroun aliene la femme apres sa mort demandera lentier sic ex parte ista.

[1] Reported by *a*, *aa*, *β*, *γ*, *δ*, *ζ*, *κ*, λ. [2] Text of (I) from *a*, collated with *aa*, *β* and λ. Names of parties from E.R. λ has in margin: De ingressu. [3] Penhurst λ. [4–4] ne recovera forsqe λ. [5] *β* omits *Toudeby*, and makes his speech part of Spigurnel J.'s.

ATTEWELL *v.* COBHAM.

I.

Entry *sur disseisine* where a joint feoffment was pleaded in abatement of the writ and to bar an action for a moiety; for where one of two joint feoffees survives the other the tenancy of the whole accrues to the survivor.

One William Attewell brought his writ of entry against Henry of Cobham and Joan his wife, and said that they had no entry into the tenements save by Stephen of P., to whom Juliana etc. leased them etc. and who has wrongfully etc. disseised Thomas the father of the aforesaid William, whose heir etc.

Toudeby. Whereas your writ says that Thomas was seised and was disseised by Juliana, we now tell you that Thomas never had aught in these tenements, except jointly with Juliana, [the tenancy being] to them and their heirs. Ready etc.

Westcote. Do you mean that for your answer?

Toudeby. We mean it to go to the abatement of the writ and to take away your action for a moiety.

Spigurnel J. Is Juliana yet alive?

Toudeby. I have only to answer the contention that if one of two joint-feoffees disseise the other the latter can bring an action for a moiety.

Goldingtone J. Where both are alive.

Toudeby. This action is given to the heir for the disseisin done to his ancestor, and therefore he cannot recover more than his ancestor had.

Spigurnel J. Who was the survivor of Juliana and Thomas?

Toudeby was not willing to answer this question, for if Juliana had survived Thomas she could not have sustained an action for more than the moiety.

Mutford J. Supposing that Juliana had survived Thomas, she would not have had an action for the whole.

Westcote. Your answer is not to the point, for though their seisin was such that Juliana was jointly feoffed with Thomas, which we do not admit, Thomas could have brought an action for the whole if he had been the survivor.

Toudeby. Plead to that.[1]

Passeley. Where a man and his wife are jointly enfeoffed, and the husband alienates, the wife can demand the whole after his death. So here.

[1] This seems to be the ruling of a judge rather than a speech by counsel.

Et puis disoient qe Juliane navoit unqes rien si noun par disseisin auxi com lour bref suppose et Thomas fut soul tenant etc. et mistrerent avaunt fet qe se temoigna.

Toud. juliane est joint feffe ove Thomas a eux et a lour heirs prest etc.

Wescote. qe Juliane entra par disseisine et Thomas soul tenant etc.

Toud. vous serez a trauvers a nous saver qe neint joint feffe ove Thomas prest etc.

[1]Et sic ad patriam.[2]

Note from the Eyre Roll.

The count was :—Unde idem Johannes dicit quod predictus Thomas pater suus etc. fuit seisitus de predictis tenementis etc. in dominico suo ut de feodo et jure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo expletia ad valentiam etc. et in que etc. Et inde profert sectam etc.

The plea was :—Et Henricus et Johanna per attornatum ipsius Johanne dicunt quod predicta tenementa fuerunt perquisitum predictorum Thome patris etc. et Juliane tenenda conjunctim sibi et heredibus suis etc. ita quod predictus Thomas nunquam fuit solus seisitus de predictis tenementis nisi conjunctim cum predicta Juliana etc. Et hoc paratus est verificare etc.

The replication upon which issue was joined was :—Quod predictus

[3]II.

De ingressu super disseisinam.

Jon ate[4] Welle porta bref dentre [5]sur disseisine[5] vers Henry de Cobeham [5]de Roudale[5] & Jone sa femme & demanda un mies[6] & c.[7] acres de terre [8]&c. en Hakyntone[8] com son droit & son heritage[9] en les qeux il navoit entre si noun par [10]Stevene de Pencestre[10] a qi Juliana [11]de Leyborne[12] ceus lessa qi a tort &c. disseisi[13] T. ate Welle[14] piere [15]lavaunt dit Jon[16] peus le terme &c.[17]

Toudeby [18]defend & dit la ou[19] vous supposez qe T. ate Welle feust soul seisi & disseisi[20] nous vous dioms qe Thomas navoit unqes rien

[1–2] λ *omits.* [3] Text of (II) from γ collated with ϵ, κ, λ. [4] κ *omits.* [5–5] κ, λ *omit.* [6–9] en Sturre λ. [7] cij. λ. [8–8] et pasture bois et rente κ. [9] κ *adds* et dount un soun piere T. par noun fust seisi etc. et fist la descente de Th. a Roger et a lui com a deux fiz et un heir de R. pur ceo qil morust sanz heir descend le droit de sa purpartie a J. qore demande etc. [10–10] Esteuene λ. [11–12] &c. λ. [12] P. κ. [13] λ *omits.* [13–14] lauantdit T. soun κ. [15–16] qil heir il est κ. [16–17] qi heir il est etc. λ. [18–20] La ou Johan ate Welle porte ceti bref etc. Sire λ. [19–20] J. atte Welle porte cesti bref devers J. et H. sa femme et diount en les queux il nount entre si noun par E. a Juliana lessa qi disseisi T. son piere λ.

And then they said that Juliana had naught but by disseisin, as their writ alleged, and that Thomas was sole tenant etc. And they put forward a charter which witnessed this.

Toudeby. Juliana is jointly feoffed with Thomas to themselves and their heirs. Ready etc.

Westcote. Juliana entered upon disseisin, and Thomas was sole tenant etc.

Toudeby. You are at issue with us, to wit, in saying that Juliana was not jointly feoffed with Thomas.

And so to the country.

Note from the Eyre Roll—*continued.*

Thomas pater etc. fuit solus seisitus de tenementis predictis absque hoc quod predicta Juliana aliquem statum habuit conjunctim cum eodem Thoma sicut predicti Henricus et Johanna dicunt. Et hoc petit quod inquiratur per patriam.

Et quia testatum est hic quod predictus Johannes atte Welle desponsavit sororem Johannis de Handlon vicecomitis etc. preceptum est Coronatori ejusdem Comitatus quod venire faciat hic xij. etc. Postea ad diem illum . . . predictus Johannes atte Welle per Justiciarios requisitus si ipse breve suum sequi vellet etc. dixit quod non set incontinenter se retraxit. Whereupon judgment is given that Henry and Joan go away *sine die*, and that John take nothing by his writ, but be in mercy *pro falso clamore*.[1]

II.

Entry *sur disseisine.*

John Attewell brought a writ of entry *sur disseisine* against Henry of Cobham of Rowdale and Joan his wife, and demanded a messuage and a hundred acres of land etc. in Hackington as his right and inheritance, into which he said they had no entry save by Stephen of Penchester to whom Juliana of Leyburn leased them, who wrongfully etc. disseised T. Attewell, father of the aforesaid John after the term etc.

Toudeby defends and says: Whereas you suppose that T. Attewell was solely seised and disseised, we now tell you that Thomas never had

[1] *m* 19.

[1]en ceus tenementz[1] si noun joynt ove Juliana [2]qar ils purchacerent les tenementz joyntement a eux & a lour heirs[2] jugement de bref.[3]

[4] Hervy. A qel effect usez vous cest excepcioun.

Toudeby pur bref abatre & lui chacer a demander la moyte.

Westcote a dire soulement qe Thomas tynt joyntement oves Juliana ne suffist mie de nous oster de cesti bref a demander lentier qar [tut] feusent il joynt feffez aussi com vous avez dit & Juliana eust disseisi Thomas del entier & aliene & ust devye Thomas eust ew accioun a entier par qey a dire soulement qil furent joyntement feffez ne suffist mie al abatement de cesti bref saunz dire[5] qe ele survesqi.[6]

Pas. [7]ad idem[7] si Thomas & Juliana use este joynt [8]feffez aussi [9]com vous avez dit[10] & Juliana ust disseisi Thomas en la vye Juliana Thomas nust recoveri fors qe la moite mes apres la mort Juliana sil ust porte lassise [11]del entier[11] il ust recoveri lentier par quei.

Toudeby Si Thomas & Juliana furent joynt feffez [12]com nous avoms dit[12] & Juliana ust disseisi Thomas homme ne pout mie dire qe ele lui disseisi del entier & de doner vous accioun par bref fundu[13] sur la novel disseisine de plus qe vous ne fustes disseis[14] serroit countre ley par qey jugement ut supra.

[1]–[1] &c. ϵ. [2]–[2] λ *omits.* [3] After this point κ is not collatable with γ. The rest of κ is as follows :—

Westcote. Volez cel pur respons.

Toudebi. Oil com a bref abatre.

Pass. Vostre excepcion chiet en fait et voilt estre trie par pais pur quei il couient qe vous diez si vous volet ceo pur respons.

Toudebi com auant.

Westcote. Sire il ne deiuent a tel excepcion sanz ceo qil nel facent plus plein estre respons qar lour excepcion nattachent il mie le droit en nuly parce qil dient qe Juliana suruesqui ne qe T. suruesqui sil voillent dire qe T. suruesqui vncore est laccion le nostre sil voillent dire qe Juliana suruesqui dient ceo pour respons et nous respondrons.

Spigurnel a *Westcote.* Il ne pledent mie oue vous en cele manere mes taunt soulement au bref abatre qar il dient la ou vous demandez lentier de ils eux (*sic*) et dites qe Juliana de ceo disseisi T. la vous dient qele ne pout de lentier lui disseisir qar ele auoit ouel estat oue lui parmy lour ioint purchace et ceo volunt auerir et qe il couient respondre.

Wescote. Enparla revint et dit qe la ou il dient qe Juliana deust estre ioint feffe oue T. la vous dioms qe Julie nauoit vnqes rien en les tenemenz si noun par disseisine.

Herui a *Westcote.* Il couint qe vous soiet tut a trauers.

Westcote. Sire nous dioms qe T. pourchasa soul sanz ceo qe Juliana ne fust ioint feoffe oue lui etc. com nostre bref suppose etc. et les autres le reuers ideo ad patriam.

Et *Nota* qapres ceo qe Toudebi auoit lauerement qe fust abatement du bref il auoit enpense dauoir weiue cel auerement et respondu al accioun et dit fust par les Justices qil poeit bien ceo faire. Postea concordati.

[4]–[6] λ *omits.* [5] ϵ *adds* ceo qe vous ne dyez. [7]–[7] Ceci excepcion nest pas suffisant en lei qe λ. [8]–[10] ϵ *omits.* [9]–[10] qe nous ne grantoms pas λ. [10] From this point λ becomes more easily collatable with δ the text of (III) *q.v.* [11]–[11] ϵ *omits.* [12]–[12] ϵ *omits.* [13] *from* ϵ ; γ *has* formedon. [14] seisi ϵ.

aught in these tenements but jointly with Juliana, for they purchased the tenements to themselves jointly and to their heirs. Judgment of the writ.

STAUNTON J. To what end are you making this exception?

Toudeby. To abate his writ, and to drive him to demand the moiety.

Westcote. Merely to say that Thomas held jointly with Juliana is not sufficient to oust us from this writ which claims the entirety, for though they were jointly enfeoffed, as you have alleged, and though Juliana had disseised Thomas of the entirety and had alienated and died, Thomas would have a right of action for the whole. Consequently to say merely that they were jointly enfeoffed is not sufficient to abate this writ, unless you add that Juliana survived Thomas.

Passeley, ad idem. If Thomas and Juliana had been jointly enfeoffed, as you have alleged, and if Juliana had disseised Thomas, then Thomas, during Juliana's lifetime, could have recovered only the moiety; but if he had brought an assize after Juliana's death and had claimed the whole he would have recovered the whole. Wherefore.

Toudeby. If Thomas and Juliana were jointly enfeoffed, as we allege, and if Juliana disseised Thomas, it cannot be said that she disseised him of the entirety. To give you an action by a writ based upon novel disseisin for more than what you were disseised of would be against the law. Wherefore judgment—*as above.*

Pas. & *Westcote* emparlerent & [1]peus respondirent al joynt feffement de gree saunz force de court &[1] disoient qe Juliana navoit navoit (*sic*) unqes rien en les tenementz joynt ove Thomas &c. & mist avant [2]une chartre qe voleit qe Thomas purchacea les tenementz a lui & a ses ij. freres saunz nomer Juliana &c.[2]

Toudeby qe Thomas & Juliana furent joynt feffeez ut supra prest &c.

[1] Alii etiam[1] [e contra] & sic ad patriam.

[1] Et Nota dit fust par[1] *Pass. Westcote & Stonore*[3] qe si trove soit[4] qe Juliana feust joynt feffe ove T. cesti bref abatera & Jon ate Welle [5]avera tiel bref com il ad ore[5] en qel bref il covent graunter le joynt feffement[6] & meyntenir laccioun del entier com il est toche en cesti plee &c.

[7]III.

[8]Johan La Welle[8] porta son bref dentre vers [9]Henry de Cobham et Johane[9] sa femme et demanda de eux un Mees en Sturry[10] en les queux eux ne unt entre si noun par [11]Esteven de Poucestre[11] a qi Jullie[12] de Norwode[13] ceux lessa qi a tort et saunz jugement T.[14]Atte Welle[14] pere meme cesti Johan qi heir il est [15]pus le prime passage[15] etc. fesaunt sa descente de T. a R. et a J. com a fitz pur ceo qe les tenemenz furent departez[16] de R. pur ceo qil mourust saunz heir etc. a Johan[17] qore demande com a frere.

Toud. La ou J. porte cesti bref et demande ceux tenemenz enterement Sire nous vous dioms qe R. nauoit rien en ceux tenemenz si noun ioint oue Jullie jugement du bref.

Pass. Ceste excepcion nest pas suffisaunt de ley qar si T. fut ioint oue J. qe nous ne grantoms pas et T. suruesquit Jullie si serreit le droit des tenemenz enterment a[18] T. [19]et si J. suruesquit donqe serreit le droit[20] a Jullie [21]si serriet le droit des tenemenz enterment a T. et si J. suruesquit donqe serreit le droit a Jullie[22] pur quei il vous couent dire si vous voillez fere vostre excepcion pleine qele[23] suruesquit.

Toud. Nous mettroms avant ceste excepcion pour bref abattre

[1_1] ϵ *omits.* [2_2] fet qe tesmoignia qe cels tenementz furent donez a T. a ses deux freres et nient a Juliana ϵ. [3] ϵ *adds* diseent. [4] ϵ *adds* par enqueste. [5_5] au tel bref ϵ. [6] purchaz ϵ. [7] Text from δ, collated with ζ, and in the latter part with λ also. Only the first few lines of this version are collatable with γ. [8_8] *from* ζ. δ *has* J. de B. [9_9] *from* ζ. δ *has* H. de C. et J. [10] *from* ζ. δ *has* S. [11_11] *from* ζ. δ *has* E. de P. [12] Johan ζ. [13] *from* ζ. δ *has* N. [14_14] *from* ζ. δ *has* A. [15_15] ζ *omits.* [16] departables ζ. [16_17] De Roger a J. com a fiz et heir ζ. [18] en la persone λ. [19_22] et e converso λ. [20] ζ *adds* entierment. [21_22] ζ *omits.* I have left this repetition, which is clearly the result of a copyist's carelessness, untranslated. [23] qe Jullie ζ.

Passeley and *Westcote* imparled, and then answered the plea of joint feoffment voluntarily and without being forced thereto by the Court. They said that Juliana never had aught jointly with Thomas in the tenements etc., and they put forward a charter which showed that Thomas purchased the tenements to himself and his two brothers, no mention being made of Juliana.

Toudeby. Ready to aver that Thomas and Juliana were jointly enfeoffed—*as above.*

Thereupon issue was joined, and so to the country.

And note that it was said by *Passeley, Westcote* and *Stonore* that if it were found [by a jury] that Juliana was jointly enfeoffed with Thomas this writ would abate, and that John Attewell could have a writ similar to the present one, but admitting the joint enfeoffment and claiming the entirety, as is stated in this plea etc.

III.

John Wells brought his writ of entry against Henry of Cobham and Joan his wife, and demanded of them a messuage in Sturry, into which, he said, they had no entry but by Stephen of Porchester to whom Julia of Norwood leased it; which Julia wrongfully and in default of judgment [disseised] Thomas Wells the father of this same John, whose heir this same John is, after the first passage etc. And he made his descent from T. to R. and to J. as to sons, because the tenements were partible. From R., because he died without heir etc., to John the present demandant, as to a brother.

Toudeby. Whereas J. brings this writ and demands the whole of these tenements, we tell you, Sir, that R. never had aught in them save jointly with Julia. Judgment of the writ.

Passeley. This exception does not satisfy the requirements of the law; for if T. were joint-tenant with J., which we do not admit, and T. survived Julia, the right to the whole of the tenements would accrue to T.; and if J. were the survivor then the right would accrue to Julia. Consequently, if you want to make your exception good, you must say that Julia survived Thomas.

Toudeby. We shall proffer this exception for the purpose of abating

qar si T. et Jullie furent iointement seisiz [1]et T. soulement[2] disseisi[3] T. ne put recouerir[4] forsqe la moite qar pus qil tindrent iointement lun ne put my disseisir lautre de lentier. Et dautre part vostre bref[5] comence de la tort Jullie[6] vivant J. vers ly ne pourriez accion auer si noun de la moite et par consequens [7]ne apres la[7] mort etc. pur quei nous vous dioms qe T. nauoit unqes rien si noun ioint oue J. prest etc.

Ston. T. pourchaca ceux tenemenz a ly et a un R. et W. [8]et lour heyrs[8] iointement et par ceste chartre et mist auant fait [9]qe ceo tesmoigne[9] T. suruesquit issint qil fut soul seisi saunz ceo qe Jullie fut unqes ioint prest etc.

Toud. Nous enparlerons.

Pass. Vous enparlerez pas qar vous auez done une excepcion et sur ceo tendu un averement le quel averement nous avoms resceu et issint sumes a issu du play pur quei vous enparlerez pas.

Toud. La excepcion qe nous donames fut pour bref abattre ore purroms nous weyuer ceste excepcion et pleder al accion.

Et avoint conge de la court denparler et pus reveindrent et tendirent[10] meme laverement qe T. nauoit rien si noun ioint oue Jullie prest etc.

Pass. T. soul tenant saunz ceo qe Jullie fut ioint prest etc.

[11]Et alii e contra.[11]

[12]ANON. *v.* ANON.

Bref dentre dum infra etatem porte en le *per* ou le tenaunt allega qil fut entre com en soun heritage et fut deinz age et pria soun age ou fut dyt qe pur ceo qe le bref fut en le *per* il naveroit pas secus est sil fut en le *post.* quere tamen.

Deus freres[13] porterunt lour bref dentre vers un C. et dit en les queux mesme celui C. nad entre si noun par un William a qi eux mesmes avoient lesse tauntqe com il furent deinz age.

Ingham. C. vous dit qe un Rogger soun pere morust seisi de ceux tenemenz apres qy mort il entra en ceux tenemenz com fiz et heir et est deinz age et prie soun age.

Malm. tauntqe a soun age ne deit la parole targer kar nous voloms averer nostre bref qil entra par William.

Cant. si vous eetz forge vostre bref qe voet qe nous entrames par

[1–3] et Julie disseise Thomas λ. [2] ζ *omits.* [2–4] disseisit Thomas si ne put Jullie aver ζ. [5] *from* ζ; δ *has* tort. [6] ζ, λ *add* mes. [7–7] apres sa ζ. [8–8] λ *omits.* [9–9] &c. ζ. [10] rejoindirent ζ. [11–11] *from* ζ. [12] Reported by *a*, *aa*, *β*. Text from *a* collated with *β*. The note in *β* is :—

Entre dum fuit infra etatem ou le tenant dit qil entra par succession et ne par celui par qi leyr suposa et fut deinz age et pria son age. *aa* has the same note.

[13] frerus *β*.

the writ; for if T. and Julia were jointly seised, and T. alone were disseised, T. could recover the moiety only, for if they both held jointly neither could disseise the other of the whole. Again, your writ begins with Julia's tort, [but] against Julia, during her lifetime, you could have had no action, unless it were for the moiety, and consequently after her death you cannot etc.; and therefore we tell you that T. had naught save jointly with J. Ready etc.

Stonore. T. purchased these tenements to himself and one R. and one W., and to their heirs, jointly, and by this charter—and he produced a charter which witnessed this. T. was the survivor, so that he alone was seised, without Julia ever being seised jointly with him. Ready etc.

Toudeby. We will imparl.

Passeley. You cannot imparl, for you have proffered an exception and upon it you have offered an averment. That averment we have accepted, and consequently issue is now joined, and so you cannot imparl.

Toudeby. The exception that we proffered went to the abatement of the writ. We can now waive that exception and plead to the facts.

And they got leave from the Court to imparl; and afterwards they came back and tendered the same averment that T. had naught save jointly with Julia. Ready etc.

Passeley. T. was sole tenant and not joint-tenant with Julia. Ready etc.

And thereupon was issue joined.

ANON. *v.* ANON.

Writ of entry while under age brought in the *per* where the tenant says that he entered by succession and that he is under age, and he prays his age; and it was said that he was not entitled to this as the writ was in the *per*. *Secus* if it had been in the *post*. But this is questionable.

Two brothers brought their writ of entry against one C., and said that this same C. had no entry into the tenements but by one William to whom they themselves had leased them while they were under age.

Ingham. C. tells you that one Roger his father died seised of these tenements. After Roger's death C. entered upon these tenements as son and heir; and he is under age and prays his age.

Malmerthorpe. His age ought not to delay the action, for we are ready to aver what our writ alleges, that he entered by William.

Cambridge. If you have chosen to say in your writ that we entered

William la ou nous entrames par descente de heritage ceo ne devoms paas comperer qe nous ne pooms estre partie a cestui bref ne al averrement qe vous tendez duraunt nostre nounage kar si lenqueste deit qe nous nentrames mie par descente mes par William issi seroms nous disherite qe serreit countre lei.

Malm. [1]et graunt[2] meschief serreit qe la ou vous estes entre par William qe le demaundant serreit delaie tauntqe a vostre age par vostre simple dit qe vous entrastes par descente.

Hervi. meindre meschief est a delaier le demaundant qe a disheriter le tenaunt.

Frisk. en un entre en le *post* ceste priere serreit suffrable mes en nostre bref en le *per* ou nous supposoms qil entra par William[3] par sa priere si suppose il qil nentra paas par William einz par descente par quei sa priere est countrariaunt a nostre bref dount si nous grauntassoms soun age si abbatrioms nostre bref demeine par quei nous navoms autre veie a pleder forsqe a meintener nostre bref daverrer qil entra par William.

Hervi. il a ad asqun cas la ou courte agarde asqune chose qe partie ne peut graunter saunz peril com la ou labbe de Wardone voucha a garaunt et la ou le garaunt vint en court et dit qil ne deveit garauntir pur ceo qil avoit accioun a demaunder les tenemenz etc. mes pur ceo qil fut lie a la garauntir[4] fut agarde qil garauntist sauve a lui actioun e sil eust simplement garaunti il se eust barre dactioun et pur ceo court puet graunter qe partie ne peust saunz peril auxi par de ceo.

Westcote. Si jeo porte moun bref de dreit vers un enfaunt deinz age et il die qe soun pere morust seisi et il entra come fiz et heir et est dedeinz age et prie soun age et qe la parole demoerge tauntqe a soun age en tiel caas la parole demora ou altrement jeo frai chescun enfaunt deinz age respoundre de soun dreit com a dire qil entra com de soun fet demene et ceo voil jeo averer par quei nient plus en lautre caas ne le chacerez a respoundre de soun heritage par vostre averrement qe en cest caas.

Hertep. [5]*ad idem.*[6] Jeo pose qe moun[7] fiz vous diseisie taunt com il est deinz age et aliene a moi jeo devie seisi de ceux tenemenz il entre com fiz et heir vous portez vostre entre [8]de la[9] novel diseisine il dit qil entra com en soun heritage apres la mort soun pere com fiz et heir et prie soun age coment qil seit venuz en soun primer estat en tiel caas il avera soun age. Auxi de ceste part.

[1–2] *β omits.* [3] *β adds* e *here*; et *was originally written in a, but has been erased.* [4] garantie *β.* [5–6] *from β.* [7] *from β.* [8–9] sour *β.*

by William when, as a matter of fact, we entered by the descent of the inheritance, we ought not to be made to suffer for it, as we cannot be a party during our nonage either to your writ or to the averment which you tender, for if the jury found that we did not enter by descent but by William we should be disinherited, which would be contrary to the law.

Malmerthorpe. And it would be a great hardship if the demandant were to be delayed till your full age upon your bare statement that you entered by descent when you really entered by William.

STAUNTON J. Less hardship is there in delaying the demandant than in disinheriting the tenant.

Friskeney. In an entry in the *post* his petition might be allowable, but by our writ in the *per* we say that he entered by William; while he, by his petition, says that he did not enter by William but by descent; this petition is, therefore, opposed to our writ; and so, if we were to grant his petition, we should be abating our own writ. Consequently we have no other way of pleading open to us than to maintain our writ and aver that he entered by William.

STAUNTON J. There have been cases where the Court has made concessions which the parties could not have made without risk; as when the Abbot of Warden [1] vouched to warranty and the warrantor came into Court and said that he ought not to warrant because in an action he was demanding certain tenements etc.; but, because he was bound to warrant, the Court ruled that he should warrant and that his right of action should be saved to him. If he had warranted, without this, he would have been barred from his action; for the Court may concede what a party could not concede without peril. So it is here.

Westcote. If I bring my writ of right against an infant within age, and he says that his father died seised and that he himself entered as son and heir and that he is within age, and prays his age and that the action may stand over till his full age, in such case the action will stand over. For otherwise I could represent every infant within age as claiming to have entered as of his own deed, and assert that I was ready to aver it. Therefore you cannot in this present case any more than in that one drive him by your averment to answer for his heritage.

Hartlepool, ad idem. Suppose my son disseise you while he is under age and then alienate to me. I die seised of the tenements, and he enters as son and heir. You bring your writ of entry *sur novel disseisine*, and he says that he entered upon his heritage as son and heir after the death of his father and prays his age. In such circumstances he will have his age, even though he come in his first estate [as disseisor]. So here.

[1] The earliest house of the Cistercian Order founded in Bedfordshire.

[1]ACHARD *v.* BERTELOT.

Bref dentre ou variaunce fut chalenge entre bref et counte pur ceo qe le bref dit *in qua non habuit ingressum nisi per B. et C. etc.* et le counte voleit qe C. fut soul seisi en soun demene com de fee.

[2]Precipe Simoni Waterlok[3] et Alicie[4] uxori ejus quod iuste etc. reddant Ricardo[5] Archard unum mesuagium etc.[6] in quod idem Simon et Alicia[7] non habent ingressum nisi per Edmundum Bergate[8] Roggerum Elis[9] quibus Beatrix que fuit uxor Johannis[10] Acharde illud[11] dimisit que illud tenuit ad vitam suam ex dimissione quam Dorrey[12] inde fecit[13] Beatrici et prefato Johanni[14] quondam viro suo et heredibus ipsius Johannis[15] consanguinei predicti[16] Ricardi cujus heres ipse est ut dicitur.[17]

Caunt. counta qe Johan soun cosyn fut seisi de qi il prist soun title et le fit cosin nomement frere soun ael.

Hert. Jugement de soun counte qil a ad counte soulement de la seisine Johan soun cosyn et dit qil fut soul seisi en soun demene com de fee et soun bref voet [18]qe issi suppose[19] qe Johan avoit joint estat ove Beatrice [20]sa femme[21] et qe Beatrice sourvesqy issi suppose le bref le revers de soun counte et il pout aver bon counte accordaunt a soun bref a dire[22] qe Johan et Beatrice furent seisiz en lour demene come de fee et de droit mesme celui Johan.

Caunt. ceo counte serreit malvois qe nous ne sumes paas a demaunder par mi Beatrice par quei a fere mencioun de lui en pernaunt nostre title par qy nous ne sumes rien a demaunder ceo[23] serriet encountre comune[24] cours de lei.

Spig. nous agardoms le counte bon en ceo point.

Pass. la[25] ou vous supposez par vostre bref qe Beatrice navoit estat forsqe a terme de vie du doun Dorrey[26] en la fourme qe vous avez counte a Johan et a ly et a les heirs Johan nous vous dioms qe celui Johan avoit

[1] Reported by *a*, *aa*, *β*, *γ* and *κ*. Text from *a* collated with the others. Names of the parties from E.R. The note in *β*, collated with *aa*, is: Entre ou un Correi dona tenemenz a J. e a B. sa femme e a les heirs J. avoit [aveiont *aa*] issue J. e D. e J. lour pere devia [dona a *aa*] J. e D. lesserent meme le tenemenz a B. en fee [*the note in aa ends here*] e devierent le demandant li fit cosyn a J. lour pere nomement frere son ael descendant a J. e D. de J. etc. pur ceo qe eux devierent etc. resortit le dreit a Richard qe ore demande e conta qy J. fut soul seisi e le bref voleit qil avoit jont estat. [2] *γ inserts* Rex vicecomiti salutem. [3] de Horton *γ*. [4] Cecilie *γ*. [5] *γ adds* filio Ricardi. [6] cum pertinenciis in Cantuaria quod clamat esse jus et hereditatem suam *γ*. [7] Cecilia *γ*. [8] de Ber et *γ*. [9] Eleys *β*; Elys *γ*. [10] N. *γ*. [11] idem *γ*. [12] Correi *β*; Dorrea Brok *γ*. [13] *γ inserts* eidem. [14] N. *γ*. [15] Nicholai *γ*. [16] ipsius *γ*. [17] *γ adds* et nisi etc. After this point *γ* has only:—ceste bref fust chalenge pur ceo qil ne peut rien demander in ceus tenementz si noun apres la mort Beatrix et il ne la fet mie morte par nules paroles en le bref mes il fut agarde bon et etc. [18–19] *from β*. [20–21] *β omits*. [22] *β omits* a dire. [23] se *β*. [24] *from β*. [25] *β omits*. [26] Correi *β*.

HATCHARD *v.* BERTELOT.

Writ of entry where variance between writ and count was challenged, for the writ set out that the tenant had no entry save by B. and C., while in the count it was stated that C. was solely seised in his demesne as of fee.

Command Simon Waterlock and Alice his wife that justly etc. they render to Richard Hatchard a messuage etc. into which they, the same Simon and Alice, have no entry but by Edmund Bergate and Roger Ellis to whom it was demised by Beatrice that was wife of John Hatchard and was tenant of it for her life by the demise which Dorrey made of it to her and the aforesaid John that was formerly her husband and to the heirs of that same John, who was cousin of the aforesaid Richard, and whose heir Richard claims to be.

Cambridge counted that John, Richard's cousin, from whom Richard took his title was seised, and he said that he was his cousin, to wit the brother of his grandfather.

Hartlepool. Judgment of his writ, for he has counted solely of the seisin of John his cousin, saying that John was solely seised in his demesne as of right and fee, but by his writ he says that John was jointly seised with Beatrice his wife and that Beatrice survived. So his writ states the opposite to his counting; and he might have a good count in accord with his writ, for John and Beatrice were seised in their demesne as of the fee and right of this same John.

Cambridge. Such a count would be bad, for we are not demanding anything through Beatrice, and consequently, in setting out our title, it would be contrary to the common procedure of the law to name anyone through whom we do not claim.

Spigurnel J. ruled that the count was good as to this point.

Passeley. Whereas you have said in your writ that Beatrice had merely a life estate by the grant of Dorrey which as you say in your count was to John and to Beatrice and to John's heirs, we now tell you

deus fitz sauer Johan et Daniel de queux vous avez fet le resortir etc. mesmes ceux Johan et Daniel lesserent mesmes ceux tenemenz apres la mort Johan lour pere a ceste Beatrice la femme Johan en fee simple par ceo fet. Prest etc. et mist avaunt le fet.

Caunt. nous voloms averer nostre bref qe D.[1] lessa auxi com nostre bref suppose par qei Beatrice navoit qe a terme de vie. Jugement si a laverrement ne devom estre resceu.

Pass. voleit aver barre par la garauntie contenuz en le fet Johan et Daniel qi heir etc. mes pur ceo qe Beatrice morust seisi et devisa[2] issi qil navient nul fet dallegger ne a moustrer coment il furent asignez *Toud.* ne voleit suffrir.

Spig. il ne peut autre[3] averement ateindre si noun daverrer soun bref.

Caunt. qe Beatrice naveit qestat a terme du lees Dorrey[4] com nostre bref suppose e qele lessa prest etc.

Wescote. qe Beatrice avoit fee du lees Johan et Daniel prest etc.

Et ideo ad patriam.

Lenqueste dit qele avoit fee du lees Johan et Daniel et qele morust seisi etc. par qei Richard ne prist rien etc.

Note from the Eyre Roll.

The contents of the writ as given in the Roll differ so much from those noted in the reports that, for the more ready understanding of the pleadings, they are here set out :—Ricardus filius Ricardi Achard per attornatum suum petit versus Simonem Bertelot et Ceciliam uxorem ejus unum messuagium cum pertinenciis in Cantuaria ut jus etc. et in quod iidem Simon et Cecilia non habent ingressum nisi per Edmundum de Berigate et Rogerum Elys quibus Beatrix que fuit uxor Johannis Achard illud dimisit que illud tenuit ad vitam suam ex dimissione quam Doreia Bock inde fecit eidem Beatrici et prefato Johanni quondam viro suo et heredibus ipsius Johannis consanguinei predicti Ricardi cujus heres ipse est etc.

The count was :—Quod predictus Johannes consanguineus etc. fuit seisitus de predicto messuagio cum pertinenciis in dominico suo ut de feodo et jure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo expletia ad valenciam etc. Et de ipso Johanne descendit jus etc. quibusdam Johanni et Danieli ut filiis et heredibus etc. Et de ipsis Johanne et Daniele quia obierunt sine herede de se resortiebatur jus etc. cuidam Isabelle ut Amite et heredi etc. Et de ipsa Isabella descendit jus etc. quibusdam Ricardo et Andree ut filiis et heredibus etc. Et de predicto Ricardo descendit jus propartis sue predicto Ricardo qui nunc petit etc.

[1] Beatrix β. [2] demisa β. [3] β *omits.* [4] Correi β.

that this same John had two sons, John and Daniel, from whom you have made resort etc. These same John and Daniel leased these same tenements, after the death of John their father, to this Beatrice the wife of J. in fee by this deed. Ready etc. And he tenders the deed.

Cambridge. We are ready to aver our writ, to wit that D. leased as our writ states, so that Beatrice had only a life term. Judgment whether we ought not to be received to make such averment.

Passeley wanted to bar him by the warranty contained in the deed of John and Daniel, whose heir etc., but because Beatrice died seised etc. and devised, so that he had no deed which he could tender nor could show how the tenements had been assigned, *Toudeby* protested.

Spigurnel J. He cannot get to any averment other than the averment of his writ.

Cambridge. That Beatrice had naught more than an estate for the term of her life by Dorrey's lease, as our writ alleges, and that she leased, ready etc.

Westcote. That Beatrice held in fee by the lease of John and Daniel, ready etc.

The inquest found that Beatrice had the fee by the lease of J. and D., and that she died seised etc. Wherefore Richard took naught etc.

Note from the Eyre Roll—*continued.*

Et de predicto Andrea quia obiit sine herede de se descendit jus propartis sue etc. predicto Ricardo qui nunc petit etc.

The plea was :—Et Simon et Cecilia per attornatum ipsius Cecilie venit et bene concedunt quod predictus Johannes consanguineus etc. de cujus seisina etc. fuit seisitus de predicto messuagio ut de feodo et jure etc. et quod idem Johannes obiit unde seisitus etc. et quod messuagium illud post mortem ipsius Johannis descendit predictis Johanni et Danieli ut filiis et heredibus etc. et dicunt quod iidem Johannes et Daniel postea de seisina sua feoffaverunt predictam Beatricem de predicto messuagio cum pertinenciis habendo et tenendo eidem Beatrici et heredibus suis in perpetuum. Et dicunt quod predicta Beatrix tempore quo ipsa dimisit predictis Edmundo de Berigate et Rogero Elys predictum messuagium cum pertinenciis habuit feodum et jus in eodem messuagio virtute feoffamenti predictorum Johannis et Danielis etc. et non tenanciam ad vitam suam ex dimissione predicte Doreie sicut predictus Ricardus per breve suum supponit et hoc parati sunt verificare per patriam.

The replication was :—Quod tempore quo predicta Beatrix dimisit predictis Johanni et Danieli predictum messuagium eadem Beatrix tenuit messuagium illud ad vitam suam tantum ex dimissione predicte Doreie sicut idem Ricardus dicit et non ut feodum et jus ex dimissione predictorum

Note from the Eyre Roll—*continued.*

Johannis et Danielis sicut predicti Simon et Cecilia dicunt. Et hoc petit quod inquiratur per patriam. Et Simon et Cecilia similiter.

The verdict was:—Quod predicta Beatrix tempore quo ipsa dimisit predictis Edmundo et Rogero predictum messuagium habuit jus et feodum in eodem messuagio ex dimissione predictorum Johannis et Danielis non

[1]NOTA.

Nota en bref dentre put estre[2] ij. issuz un a dire qil ne lessa point e la covient mye doner[3] par le[4] lees un autre qil nentra mye par cely par qy etc. et [5]a covient dire par qy etc.[5]

[Nota] qen chescun bref dentre qe suppose lees peut estre deus issues un sur le lees qil ne lessa point qe le bref suppose qil lessa ou il ne covient mie doner par quei le lees fut fet un autre sur lentre et la covient doner par qi entre: par Spig. la ou *Loveday* en un bref dentre *dum fuit infra etatem* dit qil nentra point par lui tauntke[6] il fut dedeinz age et fut chace a dire par quei il entra.

[7]SUORBERTONE *v.* PIKEL.

[8]I.

Voucher a garaunt cely qest en la prisone levesqe et fut fet protestacioun al tens al vouche qil fut en la prisoun levesqe et fut chalenge pur ceo qil ne poeit mie estre mene en court par somouns pur ceo qe la court ly tient com attient.

Henri de Suorbertone[9] porta soun bref dentre vers Nicholas Pikel[10] qe vint en court et voucha a garaunt par *Ingham* qe dit Nicholas vouche a garaunt par eide de ceste court un Johan qe serra sumouns en ceste counte qest en la prisone levesqe.

Spig. Ou qil soit vous la vochez[11] a vostre peril.

Pass. Jugement de ceste voucher qil a vouche un Johan le quel il a mesmes conu estre tiel qe nest paas menable en court.

Hervi. Nul mencioun ne serra fete en roulle de ceo qil est en prisoune [12]mes si vous le volez vocher[13] vouchez ly en vostre peril etc. qar nous ne voloms agarder qe homme soit somouns a garaunter qest en la prisoun lesvesqe et liez vostre jour[14] a lundi[15].

[1] Note from *a*, *aa*, *β*. Text from *a* collated with *β*. Marginal note from *β* collated with *aa*; *a* does not give it. [2] avoir *aa*. [3] dire *aa*. [4] qi *aa*. [5] *aa adds* il entra. [6] from *β*; tamen *a*. [7] Reported by *a*, *aa*, *β*, *γ*, *δ*, *ζ*, *η*, *θ*, λ. [8] Text of (I) from *a* collated with *β* and λ. The note in *β* is:—Vocher a garantie celi qest en la prison levesqe et le vocher contreplede ou il fut chace a dire qil fut livere com ateint. [9] Sordz λ. [10] Plucket λ. [11] *from β*; *a has* volez. [12–15] λ *omits*. [13] *from β*. [14] *from β*; *a has* gar[auntie].

Note from the Eyre Roll—*continued.*

tenenciam ad vitam suam ex dimissione predicte Doreie sicut predictus Ricardus dicit.

The judgment was :—Quod predicti Simon et Cecilia inde sine die. Et quod predictus Ricardus nichil capiat per Juratam istam set sit in misericordia pro falso clamore etc.

NOTE.

Note that in every writ of entry which alleges a lease there may be two issues: one, upon the lease, that [the alleged lessor] did not in fact lease: as the writ supposes him to have leased, and here the name of the actual lessor need not be stated; the other, upon the entry, and here the name of the person by whom entry was had must be stated. This was said by SPIGURNEL J. when *Loveday* in a writ of entry *dum fuit infra etatem* said that [the tenant] did not enter by such an one while he was under age, and was made to say by whom he did enter.

Note that in a writ of entry there may be two issues, one that the [alleged lessor] did not lease; and in this it is not necessary to say who did lease; the other that [the tenant] did not enter by etc.; and here the name of him by whom he did enter must be stated.

SURBITON *v.* PICKLE.

I.

Voucher to warranty of one that was in the Bishop's prison, and objection was thereupon taken that the vouchee was in prison and that he could not be brought into Court by a summons because in the eyes of the Court he was a convicted person.

Henry of Surbiton brought his writ of entry against Nicholas Pickle, who came into Court and vouched to warranty by *Ingham*, who said that Nicholas vouches to warranty, by the aid of this Court, one John who will be summoned within this county and is in the Bishop's prison.

SPIGURNEL J. Wherever he is you vouch him at your peril.

Passeley. Judgment of this voucher; for he has vouched one John whom he himself has admitted to be such an one as cannot be brought into Court.

STAUNTON J. No mention will be made in the roll of the fact that he is in prison, but if you vouch him you will vouch him at your own peril, for the Court does not care to order that one that is in the Bishop's prison shall be summoned to warrant; and take your day on Monday.

[1]A quel jour le vicount retourna qil fut en la prisoun lesvesqe par quei il ne pout somoundre.[1]

Pass. Nous demaundoms jugement de cest voucher quaunt il vouche celui qe ne peut sumouns resceivere.

Ingh. Pur ceo avoms desclos nostre fet a la court [2]quaunt nous vochames qil fut en la prisoun lesvesqe et sur ceo la sumouns agarde et demandoms jugement si ore nous puissez de nostre voucher ouster.[2]

Hervi. Nous ne agardames point qe homme en la prisoun lesvesqe fut somouns, mes si vous volez ore dire qil est ore livere a la prisone lesvesqe dites coment [3]il est livere a meintener vostre voucher.

Ingh. Il est livere a la prisone lesvesqe pur ceo qil ne se voleit mettre solonc lei de terre et chalenge fust par lordinari et issi a lui livere.

Hervi. il covient qe vous dites qil fut com atteinte quaunt a cest court kar altrement ne serra il jammes livere.

Ingham. il fut livere[3] com atteint [4]a ceste court[4] taunt qil soit purge mes ses terres ne ses chateux ne sount paas forfetz kar il ne se mist point.

Pass. il mesmes ad conu qil est atteint et per consequent nient respounable ne menable en court et demandoms jugement de voucher.

Ingh. si nous ne seoms receu a cesti voucher nous perdroms nostre garauntie qe serreit duresce desicom nous avom garaunt qe nest paas forfet.

Hervi. vers celui qest atteint en le court le Roi ne peut proces estre meintenu en mesme la court par qei il semble qe vostre voucher nest paas suffrable.

Wescote. si jeo soi enplede et un idiot me soit tenu a la garauntie par le fet soun auncestre qi terres sount en le main le Roi par sotie jeo crei qe jeo serrai resceu del voucher et si ne peut nul proces estre fet vers lui mes covient qe la parole demoerge[5] saunz jour auxi me semble de ceste part.

Caunt. Jeo puisse voucher a garaunt lenfaunt a nestre qest en le ventre sa mere et si ne peut il mie estre somounz.

Hervi. Vous dites mal kar cel enfaunt ne put estre vouche mes

[1]–[1] λ *omits.* [2]–[2] λ *omits.* [3]–[3] λ *omits.* [4]–[4] λ *omits.* [5] demoret *β.*

Upon that day the Sheriff returned that the man was in the Bishop's prison, and so he could not summon him.

Passeley. We ask judgment of this voucher, seeing that he has vouched one who cannot be served.

Ingham. Seeing that we disclosed the facts to the Court when we vouched, how that the vouchee was in the Bishop's prison, and that upon that statement the summons was granted, we ask judgment whether you can now oust us from our voucher.

Staunton J. The order of the Court was not that a prisoner in the Bishop's prison should be summoned; but if, to maintain your voucher, you want to say that he was sent to the Bishop's prison, say after what fashion he was sent.

Ingham. He was sent to the Bishop's prison because he would not put himself [upon a jury] in accordance with the law of the land; and he was claimed by the Ordinary, and so he was delivered to him.

Staunton J. You must say that he was delivered after being found guilty by this Court, for otherwise he would never have been delivered.

Ingham. He was delivered, after being found guilty by this Court,[1] [to be imprisoned in the Bishop's prison] until he purged himself, but neither his lands nor his chattels were forfeited, for he did not put himself [upon the country].

Passeley. He has himself admitted that he is convicted, and consequently he is capable neither of answering nor of being produced in Court; and we ask judgment of the voucher.

Ingham. If we are not received to this voucher we shall lose our warranty, which would be a hardship, since we have a right to warranty which has not been forfeited.

Staunton J. Against one that has been convicted in the King's Court process in the same Court is not maintainable, wherefore it seems that your voucher cannot be allowed.

Westcote. If I be impleaded, and an idiot, whose lands are in the King's hand by reason of his idiocy, be bound by his ancestor's deed to warrant me, I think I should be received to vouch him, and though it may be that process would not be maintainable against him yet the action might properly be ordered to stand over indefinitely. And so it seems to me here.

Cambridge. I can vouch an unborn babe that is in its mother's womb to warranty, and yet it cannot be summoned.

Staunton J. You are talking idly, for such a babe cannot be

[1] *Sc.* by 'inquest of office.' See vol. i. *Introduction*, p. lxxiii.

covient en tiel cas voucher le plus prochein heir [1]qi qe soit[1] si un tiel enfaunt &c. qest en le ventre un tiele sa mere ne se nasquise[2] et idiort (*sic*) ne forsave nenfaunt deinz age ne sunt paas hors de la lei [3]par quei &c.

Caunt. Ne en cest caas celui qest livere a la prisoun lesvesqe nest paas hors de la lei qe soun fiz navera mortdauncestre de sa mort tut moerge il en meme la prisoun [4]saunz etre purge.[4]

Hervi. Il est [4]a nous[4] hors de la ley [5]qil ne deit respoundre ne estre respondu.[5]

Malm. [6]Si par cest voucher la parole demoreit saunz jour il convendreit qil demoreit saunz jour pur certeine cause de respoundre[6] auxi com en caas avauntdit saver quousque gaudeat dilucidis intervallis &c. Mes en cest caas cest court ne peut aver cause de resomounse par quei il semble qe ceste parole ne deit pas demorer desicom le demaundaunt a ad porte soun bref sur certein tenaunt [4]vers qi sa suite est bone.[4]

Fr. Ou il covient qe le tenaunt dereine sa garauntie par soun voucher a ore ou par bref de garauntye de chartre kar lei ne voet paas qil perde sa garauntie mes par bref de garauntye de chartre ne peut il aver soun recoverir si le demaundaunt recoverast devers lui par quei il covient qil soit eide par cest voucher.

Hervi. Peut estre qen lune manere nen lautre [7]qil ne puise estre aide.[7]

Caunt. Meindre meschef est a targer cest plai qe a disheriter le tenaunt par defaute de sa garauntie [8]de puis qe a la volente le demaundaunt fut a mener sa actioun quel houre qil voleit puis le temps de actioun a lui acru mes au tenaunt ne fut a voucher si noun al temps qil fut enplede et greindre resoun est a targer le demaundaunt de sa actioun qe la puet aver meeu a sa volente qe a ouster le tenaunt de soun voucher qe ne se peut aider par sa garauntie si noun en temps qil fut enplede quia actor sibi providere potuit de actione sua habenda tempore debito et tenens non de warantia habenda etc.[8]

[1–1] de saunke λ. [2] λ *adds* cestre. [3] *a adds* tut ne puissent il resceivere somouns mes cestui atteint est hors de la lei ; λ *adds* tut ne puissent il resceivere somouns. [4–4] λ *omits.* [5–5] quant a nostre ley λ. [6–6] Par tel vocher la parole demura saunz jour il coveneit qe ceo fut par certeine cause de resomoundre λ. [7–7] λ *omits.* [8–8] et sic ad judicium λ. λ *ends here.*

vouched. In such circumstances you must vouch the next heir, whoever he may be, alternatively upon the event of such a child that is in the womb of such a mother not coming to the birth, and that because nor idiot nor lunatic nor infant within age is outside the law. Wherefore etc.

Cambridge. Nor in this case is one that has been delivered to the Bishop's prison outside the law, for his son may have a writ of *mort-dancestor* upon his death, even though he have died in that same prison without having purged himself.

STAUNTON J. He is, so far as we are concerned, outside the law, seeing that he can neither answer nor be answered.

Malmerthorpe. If this voucher be received the action will have to be adjourned indefinitely, and [though] it might properly be adjourned indefinitely by reason of certain defences, such as have been previously referred to, as, for instance, until a lunatic have a lucid interval, etc., in the present circumstances the Court can have no cause to re-summon. Wherefore it seems that this action ought not to stand over, seeing that the demandant has brought his writ against a certain tenant, against whom his suit is sufficiently good.

Friskeney. A tenant may justify his warranty either by vouching here and now or by a writ of warranty of charter, for the law is unwilling that he should lose his warranty ; but if he proceed by writ of warranty of charter he will not be able to get his recovery if the demandant recover against him ; wherefore it is right that he should be aided by this voucher.

STAUNTON J. It may be that he can be aided by neither the one nor the other.

Cambridge. It would be a less hardship that the action should stand over than that the tenant should lose his inheritance through the default of his warrantor, since it was open to the demandant to bring his action at any time he liked after right of action had accrued to him, while the tenant could vouch only when he was impleaded ; [1] and it was a less hardship to delay the demandant in his action, which he could bring at any time he liked, than to oust the tenant, who could only get the benefit of his warranty when he was impleaded, of his voucher ; for a demandant could consider what was a favourable time for bringing his action, but not so a tenant in regard to his warranty.

[1] This is not so if the procedure were by writ of warranty of charter. See *Fitzherbert, Natura Brevium* (1794), I, 134 K.

[1]II.

Vocacio ad warantizandum.

En un plee[2] de terre.

[3]*Hengham*[4] pur[5] le tenant [6]nous vochoms[6] un A a garantir[7] qest a la prisone levesqe [8]ateint de felonie par enqeste doffice.[8]

[9]*Pas.* cely qi vous vochez par vostre dit est hors de la ley. Jugement del voucher.

Hengham[4] il nest pas ateint par qey &c. Item[10] il peut uncore estre purgee & tut deuya ore son heir averoit le mortdancestre jugement [11]si le vocher ne soit assez bon.[12]

Spigurnel [13]le court le roi le tient[13] hors de la[14] ley [15]pur ceo qil est ateint [16]taunt autaunt[16] com il peut[17] par la court le roi par qey si nous acceptoms ceo vocher ceo serroit a receivrer le al ley [18]qest tenuz[18] hors de ley.[19]

Westcote [20]si homme vouche un idiot en la garde le roi [21]le vocher serroit acceptable[22] mes la parole targereit taunt qe &c [23]sic hic.[23] Item[24] un enfaunt denz age peut estre vouche mes la garaunt targera taunt qe a son age [25]aussi il semble qe cest voucher est acceptable de cely qest en prisone mes le plee targera taunt qe il soit purge.[25]

Spigurnel le idiot ne lenfaunt denz age ne sount pas hors de la ley [26]ideo non est simile.[26]

Cant un enfaunt denz[27] la ventre sa miere peut estre vouche & le vocher est acceptable & si nest il mie a la ley.

Spigurnel [28]si vous le volez vocher en la ventre &c. le voucher ne serroit mie acceptable si vous ne vochasez issint Jeo vouche a garauntir lenfaunt soit il madle ou femelle qest en la ventre sa miere si dieu ly doynt a nestre & si noun un J. frere ou cosyn mesme cely &c. & issint joyndrez un autre qi est a la ley.[28]

[1] Text of (II) from γ collated with δ, ϵ, ζ. [2] bref de play ζ. [3–5] δ, ζ *omit.* [4] *Ingham* ϵ. [6–6] voucha δ, ζ. [7] δ, ζ *add* bref issit de somondre le garranti le vicomte retorne. [8–8] etc. com celly qe fut atteint devant Justices de une felonie par une enqueste pris doffice δ, ζ. [9–10] δ *omits.* [11–12] *from* ϵ. γ *has* &c. [12] Estre ceo ϵ, ζ. [13–13] nous le tenoms δ. [14] ζ *adds* comune. [15–19] pur quei attendez nous voloms aviser. Et fet a sauer quant le tenant voucha il fist protestacion qe le voucher fut en la prisone le euesqe ut supra mes le voucher fut entre simplement saunz protestacion. Et sciendum per δ. [16–16] auxi avant ζ. [17] fust ϵ. [18–18] la ou il est ζ. [19] ζ *adds* par quei &c. [20] δ *adds* qe. [21] *from here to end* δ *reads*: esteant par sa idiotrie qe en tieu cas la parolle demoura saunz iour tanqe etc. auxi par de cea. [22] assez bon ζ. [23–23] ausy par de cea ϵ, ζ. [24] estre ceo ϵ, ζ. [25–25] ζ *omits.* [26–26] par quei il ne est pas semblable ϵ; par quei nient semblablez ζ. [27] ζ *adds* age en. [28–28] si vous voudrez voucher un enfant en la ventre sa mere vostre voucher ne serreit resceivable si vous ne vouchez un autre ceo est a saver le prochein heir en defaute de li com a voucher un enfant denz le ventre sa mere si deu li doun la grace a nestre &c. et si noun un tel &c. ζ.

II.

In a plea of land.

Voucher to warranty.

Hengham, for the tenant. We vouch to warranty one A. that is in the Bishop's prison, after being attainted of felony by inquest of office.

Passeley. He that you vouch is, according to your own statement, outside the law. Judgment of the voucher.

Hengham. He has not been convicted,[1] consequently etc. Further than that, it is yet possible that he may purge himself; and even though he were to die now his heir could have the *mortdancestor.* Judgment whether the voucher is not good enough.

Spigurnel J. The King's Court holds him to be outside the law, for he was convicted by the King's Court so far as it was possible to convict him. Wherefore if we were now to accept this voucher we should be receiving to the law one that we rule to be outside the law.

Westcote. If a man vouch an idiot in the wardship of the King the voucher would be received, but the action would stand over until etc. So here. Again, an infant within age may be vouched, but the warranty will be delayed till his full age. So it seems that this voucher of one that is in prison is receivable, but that the action should stand over till he has made his purgation.

Spigurnel J. Neither idiot nor infant within age is outside the law, so the cases are not similar.

Cambridge. An infant *en ventre sa mère* may be vouched, and the voucher is receivable, yet such infant is not at the law.

Spigurnel J. If you want to vouch one *en ventre* etc. your voucher will not be receivable unless you vouch in this wise: 'I vouch to warranty the infant, be it male or female, that is *en ventre sa mère*, if it please God that it should be born, and, if not, then one J. the brother or cousin of that same etc.,' and so you will be joining one that is at the law.

[1] *Sc.* by a jury after putting himself thereon.

Malm. si ceste [1]parole deust[1] demorer saunz jour[2] ceo serroit pur certeine cause sur qele homme purra aver resomonce mes si ele demorast &c homme navereit mie cause de resomonce qar coment qil pout estre purge apres homme ne doit aver regard fors al temps qe ore est mes ore ni ad il nule cause sur qele homme averoit resomonce[3] par qey &c.

Pas. [4]ad idem[4] si homme vouche un utlagez le vocher ne serroit mie receivable & si est il possible qen temps apres il soit restitut a la pees [5]sic nec hic.[5]

Hervi[6] le vocher nest mie receivable[7] si le garauntor ne soit somonable &[8] qe homme peuse fere vers ly executioun mes ore est il hors de la ley & nient somonable [9]par qey &c.[9] Item[10] moyndre duresse serroit qe le tenant qe ad ore soulement voche responde al demandaunt & eit[11] son recoverir par bref de garantie de chartre qe le demandaunt fust delaye.

Fris. [12]il semble[12] qil serroit greindre duresse al tenant a respondre qe a delaier le demandant[13] qar sil soit oste de cest voucher il pert sa garauntie pur touz jours[14] qar qaunt cely qest ore vouche vendra en court a bref de garauntie de chartre il dirra qil ne doit garantir qar il dirra qe si le tenant le ust voche & il uste este partie en court vers le demandaunt il le ust rebote daccioun par quitecleime ou en autre manere mes ore par collusion entre le demandant & le tenant ad il perdu cel avauntage [15]e demandoms[15] jugement sil le deyve garauntir dount si le tenant soit ore en tiel cas duresse serroit de oster le de ceo voucher.

Pas. si homme [vouche] un homme utlage en bref de accounte &c. le vocher nest mie acceptable qar il est hors de la ley & tut deivast il issint utlage son heir averoit le mortdancestre qar il nest ateint de nul fet par cele utlager dount il soit desheritable & pur ceo cele utlager ne lye fors qe lui mesme &c. qar ele nest donee en ceo cas mes damener le en jugement par qey en cesti cas coment qe leir cely qest en prisone peut aver le mortdancestre tut deviast[16] en la prisone ceo ne proeve mie qil est a la[17] ley ne qe le vocher est meyntenable &c.

[1–1] se deit targer &c ζ. [2] ζ *adds* il covient qe. [3] ζ *adds* si la parole demorast. [4–4] ζ *omits.* [5–5] nient plus par de cea ϵ ; auxi par de scea &c ζ. [6] ζ *adds* ad idem. [7] suffrable ζ. [8] issint ζ. [9–9] ne vers executioun se put fer par quei il semble qe le voucher ne vaut nient ζ. [10] estre ceo ϵ, ζ. [11] oustre foiz ζ. [12–12] ζ *omits.* [13] ζ *adds* jeo vous mustrai. [14] *from here to end* ζ *reads* : ou per ceo le garrantor qant il vendra en court purra alegger quiteclame ou autre chose dire en barre del demandant de accioun par quei &c. [15–15] *from* ϵ. [16] ϵ *adds* il. [17] ϵ *adds* comune.

Malmerthorpe. If this action be adjourned *sine die* it ought to be for some certain cause which gives the right of a resummons ; but if it should stand over etc. the tenant would have no right to a resummons, for even though the vouchee shall subsequently purge himself, the facts can be considered only as they now are, and at the present there is no cause by which a resummons may be had ; wherefore etc.

Passeley, ad idem. If a man were to vouch an outlaw the voucher would not be receivable, and yet it is possible that he might afterwards he restored to the law. And similarly not here.

Staunton J. A voucher is not receivable if the guarantor be not summonable and execution cannot be had against him. In the present case he is outside the law and not summonable ; consequently etc. And again, it will be a less hardship that the tenant who has tendered only a simple voucher should answer the demandant and have his recovery by means of a writ of warranty of charter than that the demandant should be delayed.

Friskeney. It seems that it would be a greater hardship for the tenant to answer than for the demandant to be delayed, for if the tenant be ousted from this voucher he will lose his warranty for evermore ; for when he that is now simply vouched shall come into Court by a writ of warranty of charter he may say that he ought not to warrant, for he may say that if the tenant had vouched him and if he had been a party in Court against the demandant he could have rebutted the action by a quitclaim, or in some other manner, but that now, by reason of collusion between the demandant and the tenant, he has lost this advantage. And we ask judgment whether he ought not to warrant, for if the tenant be now in such case it would be a hardship to oust him from this voucher.

Passeley. If a man vouch one that has been outlawed under a writ of account etc., the voucher is not receivable, for such an one is outside the law, and yet if he should die so outlawed his heir could have the *mortdancestor,* for such outlawry convicts him of naught that entails disherison and attaches to none but himself etc., for it was pronounced against him only as a means of bringing him to judgment ; but in this case, though it be a fact that the heir of the imprisoned man may have the *mortdancestor* even though he should die in prison, all that does not prove that he is within the law or that this voucher is maintainable.

[1]III.

Bref fut porte vers un tenant qi vocha a garantir un Johan qi fut liuere com clerk ateint a la prison lerchevesque qi sereit somons etc. qi sereit somons etc. (*sic*).

Stonore. Vous auet voche Johan qi est liuere en la prison leuesqe com clerk et issint le prouet vous hors de ley vers qi proces de ley ne se purra fere qil nest pas somonable jugement de ceo vocher.

Caunt. Il nest pas hors de la ley qil ne put estre a la ley par sa purgacion et tot deviast il en la prison nient purge son heir aueroit le mordancestre et lateindre dont vous parletz ne lie nient en son sank pur quei il seroit desherite jugement etc.

Spig. Clerk liuere a ordinare est hors de la ley et nient somonable donc si nous suffrisoms ceo vocher et feisoms venir a respondre en court nous ly acceptroms a la ley lei qeus ij. ensemble esteant.

Westcote. Enfant deinz age et celi qi est arage et ydiote en la garde le Roy ne sont pas somonables et nepurqant vous lei poez vocher.

Stant. Tot ne seient il somonables il sont a la ley.

Caunt. Jeo purray vocher enfant en le ventre sa mere qi est a nestre qi nest pas somonable ne a la ley.

Spig. Vous ne poet vocher enfant a nestre soul sanz vocher celi qi serra son prochein heir etc.

Fris. Ley nest for qe un meme entre ij. duresses a suffrir la meindre donc meindre duresse est qe ceo play demourge sanz iour a un tens qe le vocher seit purge ou mort qe son heir puse estre revouche qe agarder seisine de terre ou le tenant ne serra ia eide apres par bref de garantie de chartre ou sil venist en court il par garantir vocher poit barrer le demandant par quitclame ou par altre fet pur quei etc.

Caunt. Coment qil fut ateint par enqueste ou il se mist son sank nest pas desherite.

Pass. Ceo ne proue pas qil ne put estre voche com celi qi est a la ley qar si acun qi est utlae en bref de aconte ou de trespas son seignour

[1] Text of (III) from η.

III.

A writ was brought against a tenant who vouched to warranty one John that had been delivered into the Archbishop's prison as a convicted clerk, who was to be summoned etc.

Stonore. You have vouched John that has been delivered into the bishop's prison as an [attainted] clerk, and so you have admitted that he is outside the law and one against whom process of law cannot be availed of, for he is not summonable. Judgment of this voucher.

Cambridge. He is not [so far] outside the law but that he can be restored to the law by his purgation; and, though he died in prison unpurged, yet could his heir have the *mortdancestor*, and the conviction of which you speak does not corrupt his blood so as to cut off inheritance. Judgment etc.

Spigurnel J. A clerk delivered to the Ordinary is outside the law and is not summonable. If, then, we allowed this voucher and made such an one come and answer in Court, we should be receiving him to the law; for the one entails the other.

Westcote. An infant within age and he that is a lunatic or an idiot in the King's wardship are not summonable, and yet you can vouch them.

Staunton J. Though they be not summonable they are yet at the law.

Cambridge. I can vouch an unborn infant *en ventre sa mère* that is neither summonable nor at the law.

Spigurnel J. You cannot vouch an unborn infant solely, but together with him you must vouch him that will be his next heir etc.

Friskeney. The law is that where one of two hardships must be endured under the same writ of entry [1] it is the lesser one that should be suffered. Here it is a less hardship that this action should be adjourned *sine die* till the vouchee have either purged himself or die, when his heir can be revouched, than that seisin of the land should be granted, as the tenant cannot afterwards be helped by a writ of warranty of charter, for [the vouchee under such writ would say] when he came into Court that if he had been vouched to warranty simply he could have barred the demandant by a quitclaim or some other deed. Wherefore etc.

Cambridge. Though he had been convicted by a jury upon which he had put himself, yet would not his blood be disinherited.

Passeley. That does not prove that he cannot be vouched as one that is at the law; for the lord of one that hath been outlawed under a

[1] This seems to be what the reporter means to make *Friskeney* say, but no literal translation can make sense of the text. — F.

avera la terre de celi utlae a tote sa vie et ialemeins son heir serra enherite etc.

Et stetit vocacio.

[1]ANON. *v.* ANON.

Un Robert porta un bref dentre vers un William e recovera sa demande par defaute apres defaute. William vint puis en Cort e dit qil ne fust unqes somons ne qe la terre fust unques pris &c. e ceo dit qil le voleit averrer per les somonours et les veyours par quei bref de deceit li fust grante vers le tenant per quel bref le primers somonours furent jurez a dire verite de ceo qil seroint chargez de part le roie et fuerent severalment examinez qi disoient par lour serement qe le bailliff de la franchise fist la somons et il estoyerent de ceste a temoigne la somons. Et pur ceo qe somons en plaie de terre ne doit pas estre fait par bailiffe eins par ij. prodeshomes francs et terre tenantz et cest somons en cest fait par bailiffe e nient &c. agarde fust qe Robert reust sa seisine et William qi recovera a la prison pur la deceite.

[2]ANON. *v.* ANON.

Entre bref abbatu pur ceo qe le bref voleit en Hoo qe fut un pays et noun pas vile.

Un Adam porta soun bref dentre et demanda certeins tenemenz en Hoo.

Stonore. Chescun demaunde deit estre feit en ville et vous dioms qe Hoo nest pas vile. jugement du bref.

Caunt. Les tenemenz qe nous demandoms sunt en Hou ou il yad eglise parochiale et quant qappent a vile.

Stonore. Bien est verite qe les tenemenz sunt en Hoo mes vous dioms qe Hoo nest paas ville mes est un pais ou sount plusours villes contenuz et les tenemenz demaundes sont en une ville qest apelle Mulbourne en Hoo et demaundoms jugement du bref.

Caunt. Nous nel pooms dedire etc.

Spigurnel. Et pur ceo agarde ceste court etc.

[1] Reported by θ only. [2] Reported by α only.

writ of account or trespass shall have the land of such outlaw for all his life, yet nevertheless his heir shall inherit etc.

And the voucher stood.

ANON. *v.* ANON.

One Robert brought a writ of entry against one William and recovered his demand by default after default. Afterwards William came into Court and said that he had never been summoned and that the land was never taken etc., and that, he said, he wished to aver by the summoners and the viewers. By reason of this a writ of deceit against the tenant was granted to him, by which writ the first summoners were sworn to tell the truth as to all with which they should be charged on behalf of the King. And being severally examined the said summoners declared upon their oath that the bailiff of the franchise had served the summons, and they produced the summons itself as witness of this. And seeing that a summons in a plea of land should not be served by a bailiff but by two substantial men that were freeholders,[1] and that this summons in this matter had been served by the bailiff and not etc., it was adjudged that Robert should recover his seisin and that William who had recovered it should go to prison for deceit.

ANON. *v.* ANON.

Entry where the writ was abated because it said 'in Hoo,' which is a district and not a town.

One Adam brought his writ of entry and demanded certain tenements in Hoo.

Stonore. Every demand must be laid to be in a town, and we tell you that Hoo is not a town. Judgment of the writ.

Cambridge. The tenements that we demand are in Hoo, where there is a parish church and all that appertaineth to a town.

Stonore. True it is that the tenements are in Hoo, but we tell you that Hoo is not a town, but a district that containeth several towns; and the tenements demanded are in a town called Mulburn in Hoo; and we ask judgment of the writ.

Cambridge. We cannot deny it etc.

Spigurnel J. Then this Court adjudges etc.

[1] See *Ofheyne* v. *Staplegate*, on p. 61 *supra*.

[1]ANON. *v.* ANON.

[2]I.

Entre ou le tenant voucha a garaunt un R. qi vint et voucha un W. qi vint et voucha un William qi vint en court et demaunda pur quei etc. a lendemein le seconde voucher ne vint point par quei le demandant recoueri vers le tenant et le tenant vers le garaunt et le garaunt vers le garaunt et le quart a dieu saunz iour.

Un bref dentre fut porte vers un tenaunt qe voucha a garaunt un Robert Puk le quel Robert voucha outre un Wauter de Stetton qi vint en court et garaunti et voucha outre un William le Clerk qi vint en court et demaunda pur quei qil mist auaunt fet et puis leuerent les Justices et le secund voucher se retreyt de la barre saunz estre aiourne et lendemeyn fut demaunde qui ne vint point.

Herui. Quant parties sount apparuz en court a un iour et sunt commandez a garder lour jour de jour en jour qil serront prestz quaunt il serront demaundez et il ne hi soient etc. il aueront mesmes le jugement com sil fussount demaundez mesmes le iour quaunt il auoient apparu etc. Et pur ceo qe cestui nauoit pas jour par prefixoun et fet defaute il departi en despit de la court par quei agarde ceste court qe le demaundant recouereit sa seisine uers le tenaunt et le tenaunt uers le garaunt et sic etc. et qe William le Clerk aille a dieu saunz jour pur ceo qe Wauter ne pursuit pas soun voucher etc.

[3]II.

Processe. Un tenant voucha a garrant un Johan qi entra en la garrantie et voucha outre un Robert qe fut somone en court et Johan le voucher fit defaute.

Stantone. Agardoms un petit Cape de la terre qe fut en demande pur ceo qe qant il garranti si fut il tenant par garrantie mes sil ust fet defaute auant ceo qil eust garranti eust issue le Cape ad valenciam.

Un tenant voucha un Johan Pokel qe vint en court et garranti et voucha outre un Robert de Settone qe vint en court et voucha outre

[1] Reported by *a* and *δ*. [2] Text of (I) from *a*. [3] Text of (II) from *δ*.

ANON. *v.* ANON.

I.

Entry where the tenant vouched to warranty one R. that came and vouched one W. that came and vouched one William that came into Court and demanded why etc. On the morrow the second voucher came not; wherefore the demandant recovered against the tenant, and the tenant against the [first] warrantor and the [first] warrantor against the [second] warrantor and the fourth [party concerned] was released from all further attendance.

A writ of entry was brought against a tenant who vouched to warranty one Robert Puck, which same Robert vouched over one Walter of Stetton who came into Court and warranted and vouched over one William Clerk, who came into Court and demanded cause why he should produce any deed; and then the Justices rose, and the second voucher left the Court without having had a day given him; and on the morrow he was called and came not.

STAUNTON J. When parties have appeared in Court on the day assigned, and are bidden to continue appearance from day to day, that they may be in readiness when they are called, and they are not here, they will have the same judgment as if they had failed to appear on the day assigned to them etc. And seeing that no [further] day was assigned for this man's attendance and he has not appeared, his absence is in contempt of the Court; wherefore this Court gives judgment that the demandant recover his seisin against the tenant and the tenant against the warrantor, and similarly etc., and that William Clerk be free to go away without day assigned, seeing that Walter has not prosecuted his voucher.

II.

[1] A tenant vouched to warranty one John who warranted and vouched over one Robert that was summoned in Court, and John the voucher made default. Process.

STAUNTON J. We award a petty *cape* in respect of the land which is demanded, because when John vouched the tenant was tenant by warranty; but if John had made default previously to warranting the *cape ad valenciam* would have issued.[2]

A tenant vouched one John Pickel who came into Court and warranted and vouched over one Robert of Sutton who came into Court and

[1–2] This looks like an early attempt at a head-note; or it may be a lapse on the reporter's part which must remain unexplained.

Johan le Clerk qe vynt en court et demanda pur quei il ly voucha. Il mist auant le fet mesme celly Johan et sur ceo les Justices leuerent a lendemene vynt Johan le Clerk a la barre et Robert de Setone fut demande et ne vynt pas.

Et dit Sire Herui. Nous ne pomus my agarder le petit Cape pur ceo qil nauoit my iour par preficcion.

Toudebi. Il ny ad autre chos mes recessit in contemptu Curie.

Et fut solempnement demande et ne vint pas.

Stantone. Pur ceo qe R. de S. voucha a garrant Johan le Clerk qe vint hier en court sur nostre levee et demanda pur quei il ly voucha et pur ceo demoura la chos tanqe a hui et ore est solempnement demande et ne vint pas eynz est departi en despit de la court pur quei agarde ceste court qe le demandant recoure vers le tenant et le tenant a la value vers Johan Pokell son garrant et J. P. vers R. de S. son garrant et Johan le Clerk quite de la garrantie pur ceo qe R. de S. ne poursuyt my son voucher.

Departie en despite de Court. Judicium.

[1]ANON. *v.* ANON.

I.[2]

Entre porte de la seisine sa mere dil lees le piere ou fet de la mere ove clause de garantie fut mis avant en barre et fut chace de respoundre al fait saunz traverser le les ou lentre.

Un A. porta soun bref dentre et demaunda certeins tenemenz en les queux mesmes cesty B. nad entre si noun par le baroun sa mere a qi ele etc.

Bacoun. La ou vous demandez le dreit vostre mere aliene par soun baroun nous vous dioms qe vostre mere nous fit ceste chartre des tenemenz qe vous demaundez et obliga lui etc. et nous fussoms etc. jugement si en countre le fet vostre mere qi heir vous estes accioun poet auoir.

Caunt. Taunt amount qe vous nentrates paas par le baroun etc. nous le voloms auerrer.

Bacoun. Nous nauoms mie mester a conustre lentre le baroun kar il poount ester ensemble qe le baroun lessa et qe vostre mere obliga etc. come ceste chartre voet.

[1] Reported by *a* and *κ*. [2] Text of (I) from *a*.

vouched over John Clerk who came into Court and demanded to know by what right Robert had vouched him. Robert produced the deed of this same John; and upon this the Justices rose. On the morrow came John Clerk to the bar, and Robert of Sutton was called, but did not appear.

Then said Sir Hervey Staunton J.: We cannot here grant the petty *cape*, for Robert had no further day assigned for his appearance.

Toudeby. He has simply gone away in contempt of the Court.

Robert was solemnly called and did not answer.

Staunton J. Seeing that R. of S. vouched to warranty John Clerk who came into court yesterday at our rising and demanded why Robert had vouched him, and seeing that the hearing was adjourned till to-day and that Robert has now been solemnly called and has not come, but has gone away in contempt of the Court, this Court now gives judgment that the demandant recover against the tenant, and the tenant recover the value against John Pickle his warrantor, and J. P. against R. of S. his warrantor, and that John Clerk be quit of his warranty because R. of S. did not prosecute his voucher.

Goes away in contempt of the Court. Judgment.

ANON. *v.* ANON.

I.

Entry brought on the seisin of the demandant's mother to recover land leased by his father; where the mother's deed, containing a warranty clause, was tendered in bar of action; and the demandant was compelled to answer the deed, and was not allowed merely to traverse the lease and the entry supported by it.

One A. brought his writ of entry and demanded certain tenements into which [he said] this B. had no entry but by the husband of his mother whom she etc.

Bacon. Whereas you are demanding what you say was your mother's right alienated by her husband, we tell you that your mother made to us this conveyance of the tenements which you are demanding, and bound herself etc., and we were etc. Judgment whether you can bring action in despite of the deed of your mother whose heir you are.

Cambridge. This amounts to saying that you did not enter by the husband etc. We are ready to aver that you did.

Bacon. There is no reason why we should admit entry by the husband, for your mother's obligation is quite consistent with a lease by the husband etc., as this charter recites.

Spigurnel. Il vous peut pleder a cesti bref en treis maners ou al lees ou al entre ou en barraunt vous de accioun mes ore vous barre il daccioun par soun plee.

Caunt. il ne nous puet par cest fet daccioun barrer kar il ne deit mie qil prist estat par cest fet ne qe le fet fut fet en sa saisine jugement si par tiel fet nous puisse barrer depuis qil ne moustre mie coment le fet se vesti.

Bacoun. De puis qe vous ne dedites le fet vostre auncestre qy heir vous estes et issi est il assez grauntee par quel fet vous estes oblige a la garauntie jugement si accioun etc.

Spigurnel. Si vous volez estre ayde par cest fet il couient qe vous diez coment a vous etc.

Bacoun. Vous dioms nous qe sa mere qi heir il est en nostre saisine nous fit cest fet ut supra et demaundoms jugement.

Caunt. Donqe conisez vous le lees bien estre fet par le baroun etc. mes vous dites qe nostre mere en vostre seisine etc.

Bacoun. Nous ne conisoms mie le fet baroun mes nous vous barroms par le fet vostre mere.

Spigurnel. Le quel qe le fet fut fet auaunt ou apres desicom vous estes heir du saunk il couient qe vous responez.

Caunt. Nous ne pooms le fet dedire mes nostre mere fut coverte de baroun au temps de la confeccioun prest etc.

Bacoun. De qi couerte.

Caunt. Assez suffit sil fut en temps de couerture de qi qe ele soit couerte.

Spigurnel. De qi couerte etc.

Caunt. Couerte de Robert prest etc.

Bacoun. Nient couerte de Robert prest etc.

Spigurnel. Vous dirrez pleinement nient couerte mes sole saunz baroun.

Et sic ad patriam etc.

[1]II.

Dentre. Un Robert porta soun bref dentre vers J. et demanda certeinz tenemenz et dit qun M. son ancestre fust saisi etc. et de celui si fist il sa descente tantqe a lui et dit en les queux meme celui tenant nad entre sinon par un R. a quy un J. War. lauantdit mees lessa a quy etc.

Bacoun defendit apres la veue et dit qil ne pust en ceux tenemenz rien demander qar M. memes taunt com ele fust soule en la seisine

[1] Text of (II) from *kk*.

Spigurnel J. Three ways of pleading against you under this writ are open to him. He may plead to the lease, to the entry, or in bar of the action. At present he is pleading in bar of your action.

Cambridge. He cannot bar our right of action by this deed, for he does not allege that he took his interest by this deed, nor that the deed was made while he was seised. Judgment whether by such a deed he can bar us, seeing that he does not show how the deed inures.

Bacon. Since you do not deny the deed of your ancestor, whose heir you are, it is sufficiently admitted. By this deed you are bound to warranty. Judgment whether our action etc.

Spigurnel J. If you want to be helped by this deed you must say how it inures to you etc.

Bacon. We tell you that his mother, whose heir he is, granted this deed to us while we were seised *as above*; and we ask judgment.

Cambridge. Then you admit the lease to be in fact the deed of the husband etc., but you say that our mother during your seisin etc.

Bacon. We do not admit the deed to be the husband's deed, but we bar you by the deed of your mother.

Spigurnel J. Whether the deed was made before or after [marriage] you must answer, since you are heir of the blood.

Cambridge. We cannot deny the deed, but our mother was *coverte* by a husband at the time of the making of the deed. Ready etc.

Bacon. Coverte by whom?

Cambridge. It is sufficient if she were *coverte,* no matter by whom.

Spigurnel J. *Coverte* by whom etc.

Cambridge. Coverte by Robert. Ready etc.

Bacon. Not *coverte* by Robert. Ready etc.

Spigurnel J. You must say fully that she was not *coverte,* but *sole* and without any husband.

And so to the country etc.

II.

One Robert brought his writ of entry against J. and demanded certain tenements and said that one M. his ancestor was seised etc., and from this M. he made descent to himself, and he said that the tenant had no entry into these tenements but by one R. to whom one J. W. leased the aforesaid messuage, which J. etc. Entry.

Bacon defended after view, and said that the demandant could demand naught in these tenements seeing that M. while she was *sole* and during the seisin of R. our ancestor, to whom you allege that J. the

R. nostre ancestre a qy vous supposet qe J. baroun M. lessa lui fist une chartre et obliga lui etc. a la garrant jugement si vous poiet accioun auer, et mist auant le fait.

Caunt. Sire nous entendoms qe neioms mester a respondre a ceo fait qar il nad pas dit le quel ceo fust fait auaunt les esposailes ou apres ou en lun cas il pust barrer et en lautre nyent pur quei il couient qil grante le lees nostre baroun ou le dedie a deprimes.

SPIGURNEL. Respondet al fait si vous volet. Et pus vous dit qil ne vous deit nurer et dit dunqes qe le fait fust fait deuant les esposailes et qe son baroun et lui purchacerent pus etc. et pus le baroun aliena et ceo qe vous ore supposet mett[et] ore en fait.

Stanh. Fait qe deit estre mys pur barre il deit estre mys auant en cele manere qe la court le pust entendre pur barre et en nul autre manere, mes ore en ceo cas la court le pust entendre en .ij. maneres etc.

SPIGURNEL. Ceo qe vous pledez chiet en voidaunce de fait et vendra de vous pur ceo response.

Caunt. Nous ne poms dedire mes nous fuimes adunqes couerte de baroun.

SPIGURNEL. Vous dirret de quoi.

Caunt. De R. le Femer.

[*Bacoun*]. [1]Jeo trauers soun dit pur quoi assez moy suffist.[1]

SPIGURNEL. Vous dirret nient couerte simplement.

Et sic fecit ideo ad patriam qe dit qele ne fust nient couerte ; ideo nichil cepit etc.

[2]ANON. *v.* PAGE.

Entre par disseisine ou la veue fust ben plede.

Un Johan porta son bref dentre devers Roger Page le Eyne et un Richard Richard fit defaute apres defaute Roger aparut.

Cant. nostre bref est porte vers Roger et Richard fet defaute apres defaute pur qei nous prioms seisine de tere de la moitie.

[1–1] The reporter makes these words part of *Cambridge's* speech ; but they must have been spoken by *Bacon*. [2] Reported by λ only.

husband of M. leased them, granted him a charter and bound herself etc. to warranty. Judgment whether you have any right of action; and he tendered the deed.

Cambridge. Sir, it seems to us that we are not concerned to answer this deed, for he has not said whether it was made before or after marriage. In the one case it would bar us, in the other it would not. Consequently he ought to begin by either admitting the lease of our husband or denying it.

SPIGURNEL J. Answer to the deed if you wish to do so. And then he added:

You [*sc. Cambridge*] say that the deed ought not to harm you; and you [*sc. Bacon*] say that the deed was made before marriage and that M.'s husband and herself afterwards acquired an estate etc. and that then the husband alienated; and you must now show some proof of what you allege.[1]

Stanhope.[2] When a deed is to be tendered in bar it should be tendered in such a way that the Court may understand it is tendered in bar and for no other purpose; but now, in this case, the Court may look upon it in two ways.

SPIGURNEL J. What you are pleading is in avoidance of the deed, and we shall take it from you in that sense.

Cambridge. We cannot deny [the deed], but we were then *coverte* by a husband.

SPIGURNEL J. You must say by what husband.

Cambridge. By Robert F.

[*Bacon.*] I traverse his allegation, and I need do no more.

SPIGURNEL J. You must say simply *non coverte.*

And so he did. So to the country, which found that she was *non coverte*; and so [Robert] got naught by his writ.

ANON. *v.* PAGE.

Entry by disseisin where a view was properly claimed.

One John brought his writ of entry against Roger Page the elder and one Richard. Richard made default after default. Roger appeared.

Cambridge. Our writ is brought against Roger; and Richard makes default after default; wherefore we pray seisin of a moiety of the land.

[1] The text of this speech by SPIGURNEL J. is very obscure, but the meaning is probably as given above.

[2] *Stanhope* seems to be speaking as *amicus curiæ.*

Westcote. Sire Roger vous dit qe celi Richard qore fet defaute etc. nad rien en les tenemens mes il est tenant de lenter de la demande et de ceo demande la veue.

Cant. vous diez qe vous estez tenant de lenter de la demande dunt vous seruireit la veue del houre qe par vostre conisance demene vous estes acerte de la tenance.

SPIGURNEL. il li ad issi un maner en demande dunt il pussent plusour choses estre apendantz et issi la vewe neccesarie.

Westcote. come lei voet qe home eit la veue de tenemenz demandez et en tel maner en checun bref du munde home serreit houste de la veue de nomer celi qe ren ne ut joint ou le tenant etc. issi serreit la comune lei defaite.

Cant. ieo ne vous granterai iames la veue en ceo cas mes soit a vous jugement.

Westcote. il sunt deus maners en ceo conte nomez par teu noun etc. estre ceo il est mout a charger qe li ad maner en demande.

Cant. si ieo demande tenemenz vers deux et lun fet defaute apres defaute et lautre voile affermer le tut de la tenance en sa persone cest en ma eleccion dauerer la joinctenance solum ceo qe mon bref suppose ou de pleder en chef.

SPIGURNEL. qi reseuerieit cel auerement.

Cant. cete court par lei de tere e ceo qe jai apris.

Westcote. issint serreit la biaunce de joinct purchaz de fet[1] qe autre serreit enherite de lenter qe cele qe suruiuereit qe par la defaute lun la ou lautre est prest a respondre de lentier.

Cant. en vous iugement seit de la veue qe iames par moi ele ne serra grante en ceo cas.

[2]ANON. *v.* ANON.

Entre par disseisine ou le baron recoueri uers sa femme demene et puis le deuors se fit.

Un Reginald porta son bref dentre uers une femme et demanda certein tenemenz issi qe la femme fit defaute pur quei le demandant suit le graunt cape. Auant le cape retourne Roger (*sic*) espousa cete femme et pus suit auant le ple tanqe il recoueri par defaute apres

[1] One is tempted to believe *fet* a mistake for *faire*. [2] Reported by λ only.

Westcote. Sir, Roger tells you that this Richard who now makes default etc. has naught in the tenements, and that he himself is tenant of the whole of the demand, and of that he asks a view.

Cambridge. You say that you are tenant of the whole of the demand. Of what use, then, would a view be to you, since by your own admission you are well aware of the extent of the tenancy?

Spigurnel J. There is also a manor in demand, and thereto may many things be appendant, and consequently a view may become necessary.

Westcote. Common law gives everyone a view of tenements demanded from him, but by this fashion of naming along with the tenant one who has nothing a man may be deprived of his view under any writ in the world, and so the common law would be defeated.

Cambridge. I will never consent to a view in this case. It must be by judgment of the Court.

Westcote. There are two manors within this county named by such and such names. Besides this it is a weighty matter that there is a manor in demand.

Cambridge. If I claim tenements from two tenants, and one of these make default after default, and the other be ready to aver that the whole of the tenancy is in himself, then it is at my election to aver a joint-tenancy in accordance with the allegation of my writ or to allow the latter to plead in chief.

Spigurnel J. Who would receive such an averment?

Cambridge. This Court, by the law of the land, if I have learnt it aright.

Westcote. In that case the effect of a joint purchase will be to make some other than the survivor take the whole in the case where one of the joint purchasers makes default and the other is ready to answer for the whole.

Cambridge. View must be adjudged by you, for I will never consent to it myself in these circumstances.

ANON. *v.* ANON.

Entry by disseisin where the husband recovered from his own wife; and afterwards the parties were divorced.

One Reginald brought his writ of entry against a woman and demanded certain tenements. As the woman made default the demandant sued out the grand *cape*. Before the *cape* was returned Roger married this woman, and then prosecuted his action till he

defaute vers sa femme demene. Pus a la sute la femme deuors se fit entre eus. Et pus fit venir le record del ple[1] par le qel soun baron recouerit deuant Sir Roger Brabason ou ele fut respondu qe accion ne poet ele mie auer par record du Roule a demander meme ceux tenemens car ele poeit auer soun bref de deceite vers celi qe fut soun baron etc. Ele respondit et dit qele voleit sure par Record ut prius et suit bref hors de Roules a fere venir soun baron en court. Il vint en court et ele conta vers li coment il recoueri sa tere par defaute apres etc. tanqe ele fut couert de baron et ensi par reson de couerture ele perdi sa tere et pria agard des Justices en ceo cas.

Roger vint et dit qil suit vers li com vers une estrange tanqe il recoueri sa seisine par defaute et taunt cum ele fut sole et ne mie couert de baron prest et la femme e contra. Lenqueste vint et dit coment il recoueri sa seisine tancum ele fut couert pur quei fut agarde qe ele recouerit sa seisine et il en la merci pur ceo qil fut auis a la court qe nule defaute qe ele fit tancum ele fut couerte ne le traver[sast] en preiudice apres le devors fet etc.

[2]ANON. *v.* ANON.

[3]I.

Entre *ad terminum qui preteriit* porte par la femme dil lees le baroun et la femme jointement et le les tranverse et pur ceo le bref abatyt.

Un Johan et Maud sa femme furent seisiz des certeinz tenemenz et lesserent mesmes les tenemenz a un A. a terme des aunz A. tint les tenemenz outre le terme et [4]morust seisi etc.[5] apres qi mort B. soun fiz entra etc. Ore vint Maud apres la mort soun baroun et porta soun bref dentre vers mesme celui B. et dit qe B. en les queux tenemenz il nad entre si noun par A. a qi ele lessa a terme qe passe est.[6]

Pass. la ou Maud suppose qele lessa sole a A. nous vous dioms qe Maud et Johan [7]son baroun[8] lesserent jointement[9] judgement du bref.

Stonore. donqe dites vous qe Maud et Johan[10] lesserent a terme qe passe est jointement[11] nient paas Maud sole.

[1] A *regula* in the Register of Writs says:—

'Si faux judgement soit done en countz Court Baron ou auter court nient enfraunchise que ont conisaunce de plee, celui contre qui judgment est done poet aver bref de recorder la parole devant justices en banc ou en eire.'

[2] Reported by *a*, *aa*, *β*, *γ*, *δ*, *ϵ*, *ζ*, and *λ*. [3] Text of (I) from *a* collated with *aa*, *β*, *γ* and *ϵ*. The note in *β* is:—

Entre *ad terminum qui preteriit* ou le demaundant dit qe le tenaunt navoit entre si non par B. a qi ele lessa les tenemenz. *a* gives a second report of the case, and to this the following *a* collations refer.

[4–5] *from γ*; se lessa morir *a*, *β*. [6] *aa adds* iontement nient par Maud soule. [7–8] *from ϵ*. [9] *γ and ϵ add* etc. [10] *γ and ϵ add* son baroun. [11] *γ and ϵ add* et.

recovered against his own wife by default after default. Then, at the wife's suit, a divorce was pronounced between them. And afterwards the wife procured that the record of the action before Sir Roger Brabazon in which her husband recovered against her should be brought; and then it was put in answer to her that she could not have an action to demand these tenements by the record on the roll, seeing that she might have a writ of deceit against him that had been her husband etc. She answered and said that she wished to sue by the record *as before*; and she sued out a writ from the roll summoning her husband into the Court. He came into Court, and she counted against him how he had recovered her land by default after etc. while she was *coverte* by a husband; and so, by reason of her coverture, she lost her land, and she prayed the judgment of the Justices in these circumstances.

Roger came and said that he sued against her as against a stranger till he recovered his seisin by default, and while she was *sole* and not *coverte* by any husband. Ready. And the woman joined issue. The inquest came and said that Roger recovered his seisin while the woman was *coverte*; whereupon the Court gave judgment that the woman recover her seisin, and that the man remain in mercy, for it seemed to the Court that no default made by her while she was *coverte* ought to act to her prejudice after divorce decreed etc.

ANON. *v.* ANON.

I.

Entry *ad terminum qui preteriit* brought by a woman upon a lease which she was forced to admit was the joint lease of herself and her husband, and not, as she alleged, her own sole lease; and the writ was thereupon abated.

One John and Maud his wife were seised of certain tenements and leased these same tenements to one A. for a term of years. A. held the tenements beyond the term, and then died seised etc. After his death, B. his son entered etc. Now comes Maud, after her husband's death, and brings her writ of entry against this same B., and says that B. has no entry into these tenements save by A. [his father] to whom she leased them for a term that has expired.

Passeley. Whereas Maud alleges that she alone leased the tenements to A., we now tell you that Maud and John her husband jointly leased them. Judgment of the writ.

Stonore. Do you say, then, that Maud and John leased jointly, and not Maud alone, for a term that has expired?

Pass. nous vous dioms qe Maud et Johan lesserent[1] jointement mes le quel a terme ou en fee nous ne diom point [2]par quei nous conclusoms tut[3] sur le les [4]et qaunt ceo bref est abatu et vous portez autre nous[5] pooms dire tut a temps le qel le lees se fist a terme ou en fee.[6]

Spig. [7]quaunt il pledent si est sur le lees.[8]

Stonore. jeo ne puis[9] aver autre bref kar le *cui in vita* ne me peut servir kar le lees ne fut[10] forsqe a terme issi[11] qe le fraunc tenement [12]nous demora.[13]

Pass. si cesti bref ne [14]se abbatesist et qele eut bon bref nous perdroms nostre voucher vers Johan qe serreit duresce en lei par quei etc. [15]estre ceo[16] il pout estre qe Johan et Maude lesserent et qe Johan obliga lui et ses heirs etc.[17]

[18]*Westcote* et *Stonore* sei conceilerent.[19]

Westcote.[20] ele peut en ceo cas [21]porter lentre[22] sur la diseisine kar quaunt [23]le terme fut passe et[24] le termer tint outre il devint diseisour par quei[25] etc.

Stonore. nous ne poums dedire qe Johan et Maud lesserent jointement.

Par qei fut agarde qele ne preit rien par soun bref etc.[26]

[27]II.

Ung Maud porta son bref[28] ad terminum qui preteriit et dit qe le tenant nauoit entre si noun par meme cele Maud [29]qi fut demandant[29].

Pass. Nous nentrames pas soulement pas Maud einz[30] par Johan son baron [31]et ly[31] jugement du bref.

Ston. Maud suruesquit J. pur quei[32] le fee et le droit et le franctenement demoura en sa persone et par vostre excepcion vous la mettrez[33] a son[34] Cui in vita qe ne le poeit seruer forsqe en cas [35]ou le[35] baron par son lees auoit fet franctenement [36]en la persone le[36] tenant [37]pur quei si ele se pourchace par le Cui in vita le tenant abatereit le bref pur ceo qele serroit meme seisi du franctenement.[37]

[1] γ *and* ϵ *add* ceus tenementz. [2–3] ne ne couient pas qe nous conclusoms tut *a*; qar nous conclusoms soulement γ, ϵ. [4–6] *from* γ *and* ϵ. [5] ne γ. [7–8] ad idem ceo qil plede ore nest fors al lees soulement γ *and* ϵ, ϵ *omitting* ad idem, *a omits.* [9] pusse β; peus γ, ϵ. [10] se fist γ, ϵ. [11] issint γ, ϵ. [12–13] tous iours demora *a*; demoera γ, ϵ. [14–17] soit abatu nous perdiroms la garde vers les heirs Jon, γ, ϵ. [15–16] Spigurnel *a.* [18–19] *from* γ *and* ϵ. [20] γ *and* ρ ϵ *add* dit. [21–22] avoir bon bref dentre γ, ϵ. [23–24] γ, ϵ *omit.* [25–26] il dit a la court qil ne pout dedire qe le lees ne se fist par Maud et son baron joyntement et sufferi le bref estre abatu par jugement pur avoir bon bref apres ceo est a savoir un bref dentre sur disseizin γ *and* ϵ. [27] Text of (II) from δ collated with ζ and λ. [28] λ *adds* dentre. [29–29] &c. λ. [30] mes λ. [31–31] ζ *omits.* [32] ζ *adds* et. [33] metz λ. [33–34] al λ. [35–35] la ou λ. [36–36] au λ. [37–37] ζ *omits*; pur quei il semble &c. λ.

Passeley. We tell you that Maud and John leased jointly; but whether for a term or in fee we do not say. We are now taking our stand upon the lease. When this writ is abated, and you bring another one, then we shall be able to say whether the lease demised for a term or in fee.

Spigurnel J. He is pleading now only to the lease.

Stonore. I cannot have any other writ, for the *cui in vita* would not serve, seeing that the lease was for a term only, and that the freehold, consequently, remains in us.

Passeley. [Unless this writ be abated and she bring a good writ, we shall lose our voucher against John, which would be a great hardship for us. Wherefore etc. Further than that, it may very well be that John and Maud leased, and that John bound himself and his heirs etc.

Westcote and *Stonore* conferred.

Westcote. In this matter Maud may bring the writ of entry *sur disseisine*; for when the term expired and the termor held on after the term he became a disseisor, whence etc.

Stonore. We cannot deny that John and Maud leased jointly.

And so judgment was given that Maud take naught by her writ etc.

II.

One Maud brought her writ *ad terminum qui preteriit*, and said that the tenant had no entry save by Maud herself, the present demandant.

Passeley. We did not enter by Maud solely, but by John, her husband, and herself. Judgment of the writ.

Stonore. Maud survived John. Consequently the fee and the right and the freehold remained in her person. By your exception you would make her have recourse to a *cui in vita*. But this is a writ which can only be used in the case where a husband has by his lease demised the freehold to the tenant. Consequently if Maud were to sue out a *cui in vita*, the tenant would abate it, seeing that the freehold remains in Maud herself.

Pass. Si nous ne[1] abatissoms le[2] bref nous perdroms nostre garranti qe nous avoms le heir Johan.

Westcote [3]*ad idem.*[3] Si Johan fist le lees a terme qe ia est passe Maude a son recouerir par assise de nouel disseisine.

Hert. Le bref est tut faux si le lees fut fait par Johan durant la couerture qar suppose qe Maud lessa et pur ceo cesti bref ne ly purra servir en nule maner.

Et fut le bref abatu mes dit fut par plusours seriantz qe disseisine[4] ly serviroit.

Pass. Nous dioms qe Maud et Johan lesserunt[5] iointement mes le quel [6]qe en[6] fee ou autrement[7] nous nauoms my mester[8] qar nous conclusoms soulement sur le lees et quant cesti bref serra abatu et vous portez autre nous [9]pomes dire qe tut al temps le quel le lees fut a terme ou en fee.[9]

[10]ANON. *v.* ANON.

[11]I.

De ingressu. En un bref dentre [12]ad terminum qui preteriit[13] qe fust[14] porte vers une femme.

[15]*Pass.* sire[16] nous navoms[17] rien [18]en ces tenementz[19] ne rien ne clamoms[20] si noun par reson de norture dun B.[21] enfaunt denz age [22]en nostre garde esteant par reson de son noun age[22] jugement de bref.

Cant. tenant del fraunktenement jour del bref purchace prest &c.

[23]*Pas.*[24] vous ne serrez mie receu a cel averement countre[25] nostre declamer.

Stonore. ad idem il ne sera mie receu &c. [26]a tel averrement de affirmer franctenement en nostre persone[26] countre nostre desclamer sil ne fust en tiel bref ou homme recovereit damages qar en tiel cas par desclamer homme ne estourtera mie les damages.

Goldyntone [27]ad idem.[27] vous poez entrer si vous volez.

[1] λ *omits.* [2] ceti λ. [3–3] ζ *omits.* [4] lassize ζ. [5] lesserent λ. [6–6] *from* ζ ; δ *omits.* [7] a terme ζ, λ. [8] λ *adds* a dire. [9–9] purroms tout a tens dire et muster le les en certein λ. [10] Reported by *a, aa, β, γ, δ, ϵ, ζ, η.* [11] Text of (I) from γ collated with δ, ϵ, ζ. [12–13] δ *omits.* [12–14] ζ *omits.* [15–17] qi vint en court et dit qele nauoit δ, ζ. [16] *from* ϵ. [18–19] *from* ϵ. γ *has* &c. [19–20] δ, ϵ *omit.* [21] J. δ, ϵ. [22–22] et rien ne clame en le franctenement δ, ζ. [23–25] Spigurnel. vous navendrez a cel averement encountre ζ. [24] Spig. δ. [25] from this point to the end of the case δ reads :—

son clamer qar si vous morissez en les tenemenz ele nauereit iammes recouerir par assise encontre son desclamer, pur quei agarde ceste court qe vous preignez rien par vostre bref [secus est qui desclamereit per attornatum quia tunc excepto placito supra]. ζ reads similarly, omitting the words within the brackets.

[26–26] from ϵ ; &c. γ. [27–27] ϵ *omits.*

Passeley. If we do not abate this writ, we shall lose the voucher to warranty which we have against John's heir.

Westcote, ad idem. If John demised by lease for a term which has expired, Maud can recover by assize of novel disseisin.

Hartlepool. The writ is absolutely bad if the lease were made by John during the coverture, for it supposes that Maud leased; and consequently this writ is no good at all.

And the writ was abated; but several serjeants said that Maud might have proceeded by [writ of novel] disseisin.

Passeley. We say that Maud and John leased jointly, but whether in fee or how we are not called upon now to say; for we are taking our stand solely upon [the parties to] the lease, and when this writ is abated and you bring another one, then we shall be able to say whether the lease was for a term or in fee.

ANON. *v.* ANON.

I.

In a writ of entry *ad terminum qui preteriit* that was brought by a woman :— Entry.

Passeley. Sir, we have nothing in these tenements, nor do we claim anything except by reason of the nurture of one B., an infant within age that is in our guardianship by reason of his infancy. Judgment of the writ.

Cambridge. Tenant of the freehold on the day of the purchase of the writ. Ready etc.

Passeley. You will never be received to make such an averment as that against our disclaimer.

Stonore, ad idem. He will never be received to make an averment asserting in the face of our disclaimer that the freehold is in us. He could only succeed in that under a writ seeking to recover damages, for in that case disclaimer will not act in bar of damages.

Goldington J., *ad idem.* You can enter if you wish.

SPIGURNEL. coment est la femme la par attorne ou en propre persone.

Westcote. par attorne mes[1] nous entendoms qele peut aussi bien desclamer par attorne com en propre persone.

SPIGURNEL. ne mie si bien qar lattorne est fet a defendre le play & nient a fere reconisaunce.

Wescote. attorne peut rendre.

SPIGURNEL. verite est mes il ne peut mye desclamer ne nest mie si prive a fere coniceaunce com la partie mesme.

[2]Habuerunt diem in crastinum[2] & la femme vynt en propre persone & desclama &c. ut supra & le bref abati par jugement.

[3]II.

Desclamer fet par aturne le tenaunt ou le demaundant tendi daverer qe pleinement tenaunt jour du bref purchace et fut laverement resceu pur ceo qe le tenaunt fut par atourne secus est sil eust este en propre persone qe adonqes le demaundaunt ut entre et ne mie ew laverement.

Un bref fut porte vers un tenaunt qi vint en court par atturne et dit qil navoit riens en les tenemenz ne rien ne clama. [4]Jugement du bref.[4]

Ingh.[5] Tenaunt le jour du bref purchace prest &c.

GOLDINGTONE. Il discleime en la tenaunce[6] vous poez entrer[7] si vous volez par quei naverez mie laverrement [8]en countre &c.[8]

SPIG. Le tenaunt est par atturne mes sil fut en propre persone et desclamast vous naverez paas laverrement par quei estoise laverrement.

Nota ou le tenaunt desclame par atturne lautre fust receu de averer qe tenaunt del enter pur ceo qil fust par atturne.

[9]NOTA.

[10]En un bref dentre ad terminum qui preteriit le tenant dit qil navoit rien[11] ne rien ne clama.[12]

[1] ϵ *adds* nequedent. [2–2] Aveient jour tantqe a lendemeyn ϵ. [3] Text from α collated with β and η. The note in β is:—
Nota ou le tenant desclame par atorne fut receu daverer qil fut tenant del entierete jour etc. pur ceo qil fust par atorne. There is a similar note in *aa*.
[4–4] ne rien aueit iour de bref purchase η. [5] Lauf. η. [6] η *adds* ou. [7] einz η. [8–8] η *omits*. [9] Note from γ, δ, ϵ, ζ. Text from γ collated with the others. [10] ϵ *adds* Nota. [11] ζ *adds* en les tenementz. [12] δ *adds* et demanda jugement du bref; ϵ *adds* &c.; ζ *adds* et demandoms jugement du bref.

SPIGURNEL J. How is the woman here, in person or by attorney?

Westcote. By attorney; but we understand that she can disclaim as well by attorney as in person.

SPIGURNEL J. That is not so; for an attorney is appointed to represent her in the management of the action, and not to make admissions.

Westcote. An attorney can surrender.

SPIGURNEL J. That is true; but he cannot disclaim, neither does he so completely represent the party as to be able to make admissions to the extent that the party in person may make them.

The hearing was adjourned till the morrow, when the wife came in person and disclaimed etc. as above, and the writ was abated by judgment.

II.

Disclaimer by the tenant's attorney where the demandant offered to aver that the tenant was tenant of the entirety on the day of writ purchased. The averment was received because the tenant appeared by attorney. *Secus* if he had appeared in person, for then the demandant would have had entry and not averment.

A writ was brought against a tenant who came into Court by attorney and said that he had naught in the tenements and claimed naught. Judgment of the writ.

Ingham. Tenant on the day of the purchasing of the writ. Ready etc.

GOLDINGTONE J. He disclaims tenancy. You can enter if you choose; and consequently you will not be received to make an averment against etc.

SPIGURNEL J. The tenant is here by attorney; but if he were here in person and disclaimed you would not get your averment. Consequently [as he is not here in person] the averment may be received.

Note that where a tenant disclaimed by attorney the demandant was received to aver that he was in fact tenant of the entirety, and this because the tenant appeared by attorney.

NOTE.

In a writ of entry *ad terminum qui preteriit* the tenant said that he had naught and claimed naught.

Laufer. tenaunt jour del bref purchase prest &c.

Hervi. [1]Si le tenaunt fust la en propre persone vous ne serriez mie receu a tiel averrement encountre le desclamer [2]& pur ceo qil est[3] par attorne[4] soit laverrement receu &c.[5]

[6]CRAYE *v.* SKATHBURY.

Ad terminum qui preteriit.

Simond de Creyf[7] porta son bref dentre ad terminum qui preteriit vers Jon de Scadebury[8] & demanda .iij. acres de boys &c[9] en C.[10] en les queux [11]il navoit entre[11] si noun peus le lees qe Simond de Crey[12] ael cesti Simond[13] qi heir il est de ceo enfist a [14]Richard de B.[14] a terme qe passe est.

Westcote [15]defendi[16] &[17] demanda ceo qil avoit del terme.

Cant. prest[18] daverrer.

Westcote. donqes[19] dioms nous qe Simond vostre ael le lessa en fee & par ceste chartre [20]et myst avant la chartre S. qe ceo tesmoina e demandoms[20] judgment si vous pusez [21]en ces tenements[21] rien demander.

Cant. prist le fet a lui et peus dit qe ceo ne fust mie le fet S. par qey enqeste se joynt & jour done de fere venir lenqeste. [22]A quel jour lenqueste eslue e[22] juree e charge le qel ceo fust le fet S. [23]ou nount les queux alerunt et enparlerunt[23] & ne se poeient acorder cel jour par qey ils fuerent commande en garde de viscounte taunt qe lendemeyn & donqes[24] vindrent il [25]a la barre[25] & furent a un & Simon fust demande & ne vynt point par quey fust agarde [26]pur ceo qe il ne meyntint point ceo qe il avoit eynz dedit qe il ne preist[27] rien par son bref[28] sed in misericordia &c. e Johan de Scadeburg a dieu[29] e dist fust par

[30]Spigurnel & Hervi.[30] qe noun sute ne serroit mie agarde en ceo cas del houre qe lenqeste fust juree [31]& esleu[31] par assent &c & Simon qi avoit dedit le fet son auncestre ne pursiwist mie a meintenir ceo qil avoit tendu[32] &c & nous le jour deyre & huy tenoms tut[33] un jour par qey

[1–5] pur ceo qe le tenant est ci par attorne il convient qe laverrement seit receu secus esset si le tenant fut en propre persone en la court δ; ζ *has the same, adding* Questio diversitatis. [2–3] Mes il est la ϵ. [4] ϵ *adds* e pur ceo. [6] Reported by γ, δ, ϵ, ζ, λ. Text from γ collated with the others. Names of parties from E.R. [7] T. δ; Creye ϵ; Gray ζ; Cri λ. [8] S. δ, λ. [9] ove les apurtenances δ, ϵ, ζ. [10] δ, ϵ, ζ *add* et dit. [11–11] *from* δ, ϵ, ζ. &c. γ. [12] S. δ; Creye ϵ; Gray ζ; Cri λ. [12–13] ζ *omits.* [14–14] δ *omits*; R. λ. [15–17] ζ *omits.* [16–19] nous λ. [18] nous le voloms δ, ϵ; voloms ζ. [19] ϵ *adds* vous. [20–20] *from* ϵ. &c. γ. [21–21] *from* ϵ. [22–22] *from* ϵ. Lenqeste γ. [23–23] *from* δ; &c. γ; ou nount et senalerunt denparler ζ; &c. les quez alerent λ. [24] lendemeyn ϵ. [25–25] *from* ϵ; etc. γ. [26–27] from ϵ; etc. γ; preist ζ; qil ne prist λ. [26–28] qil ne prist rienz par son bref eynz fut en la mercy et J. de S. adieu δ. [27–29] *from* ϵ; &c. γ. [28–29] *from* ϵ. [30–30] Hervi et Spigurnel ϵ, λ. [31–31] ζ *omits.* [32] δ *omits.* [33] λ *omits*; δ *adds* pur.

Laufer. Ready etc. that you were tenant on the day of the writ purchased.

Staunton J. If the tenant were here in person you would not be received to make such an averment against a disclaimer; but since he appears by attorney the averment will be received etc.

CRAY *v.* STATENBOROUGH.

Entry for a term that has expired.

Simon of Cray brought his writ of entry *ad terminum qui preteriit* against John of Statenborough, and demanded three acres of wood etc. in C.; into which he alleged that John had no entry save by the lease which Simon of Cray that was grandfather of this same Simon [the demandant], who is his heir, granted to Richard of B. for a term which has expired.

Westcote defended and asked what evidence there was of the term.

Cambridge. Ready to aver.

Westcote. Then we tell you that Simon your grandfather leased in fee, and by this charter—and he produced the charter of Simon which showed this—and we ask judgment whether you can claim aught in these tenements.

Cambridge inspected the charter, and then said that it was not the charter of Simon. Thereupon issue was joined, and a day was assigned for a jury to come. And upon that day was a jury chosen and sworn and charged to say whether the deed was Simon's deed or no. And they went out and consulted together, but they could not come of one mind on that day; and by reason thereof they were given in charge of the Sheriff until the morrow; and then they came to the bar and were all agreed. And Simon was called, but he came not; and because he did not [appear to] maintain his denial [of the authenticity of the charter] it was adjudged that he should take nothing by his writ, but be in mercy etc.; and that John of Statenborough should go away without day.

And by Spigurnel and Staunton JJ. it was said thus:—There ought not to be a non-suit in this case as a jury has been sworn and chosen with the consent etc., and Simon, who had contested the deed of his ancestor, did not persist in following up his contention etc.; and we, looking upon yesterday and to-day as forming but a single

nous avoms done autiel jugement ore com sil ust este a la barre[1] ore & se ust retret qar si Jon de Scadebury ust huy[2] fet defaute nous nusoms ja agarde le petit cape mes [3]usoms agarde[3] seisine de terre com[4] sur celui [5]qi ust departi en despit de la court &c.[6] de la barre[7] &c.[8]

Note from the Eyre Roll.

The Plea was :—quod cum predictus Simon asserit predictum Simonem avum etc. dimisisse predictum boscum cum pertinenciis prefato Johanni Huttynge ad terminum qui preteriit etc. idem Simon avus etc. per cartam suam dedit concessit et confirmavit predicto Johanni Huttynge predictum tenementum etc. tenendum eidem Johanni et heredibus suis in feodum perpetuum etc. Et profert cartam ipsius Simonis avi etc. que hoc idem testatur etc.

The Replication, upon which issue was joined, was :—quod per cartam illam ab accione excludi non debet etc. dicit enim quod carta illa non est factum predicti Simonis avi sui etc. et hoc petit quod inquiratur per patriam.

[9]ACHARD *v.* ELYS.

[10]I.

Ad terminum qui preteriit.

Richard Achard porta un bref ad terminum qui preteriit vers Roger Elis et Alice sa femme et demanda certeine terre et counta de la seisine un Johan soun auncestre descendant a Johan et Daniel com a ij. fiz et un heir pur ceo qe les tenemenz sount departables deux fist il un resort a W. uncle J. et D. et frere Johan de William descendant tanqe a lui et dit en les queux meme ceux R. et A. nount entre si noun par une Cecile a quy lauantdit J. soun uncle ceste terre lessa a terme qe passe est.

Launf. defendit et dit qe Sire la ou il dit qe J. lessa a C. etc. la terre a terme qe passe est nous vous dioms qe J. et D. lesserunt a lauantdit C. en fee prest etc.

Caunt. a de primes conisez le lees qe nostre bref suppose ou dedit le.

Launf. Ieo nai pas mester car jai dit qe J. et D. parmy qi vous auez

[1] ϵ *adds* a. [2] δ *omits.* [3–3] ζ *omits.* [4] ζ *omits.* [5–7] ζ *omits.* [6–7] from ϵ. [8] δ *adds*: Idem judicium datum erat par Berr et Mutford in banco Trinitatis xj° in brevi de avo ou le tenant dit qe lael le demandant ne mourust pas seisi pur quei lenqueste iore et eslu par assent etc. le tenant aperceut qe lenqueste irrait encontre ly et departit en despit de la court. Jugement done encontre ly ut in precedenti. [9] Reported by *a*, η and κ. [10] Text of (I) from κ. Names of parties from E.R.

continuous day, have now consequently delivered the same judgment as we should have delivered if the demandant had continued at the bar up to the present moment and had then withdrawn himself; and if John of Statenborough had to-day made default in appearance we should not have awarded the petty *cape*, but should have granted Simon seisin of the land as against one who had, in contempt of the Court, withdrawn himself from the bar.

Note from the Eyre Roll—*continued.*

The hearing is now adjourned till a jury be got. 'Et sciendum quod predicta carta liberatur Roberto de Haumle clerico Regis custodienda etc.'

The jury being unable to agree remain 'in custodia prout moris est etc. usque in crastino.' On the morrow, when the jurors came into court to return a verdict, Simon was called but failed to appear. The Court, consequently gave judgment that John should go away *sine die*, and that Simon should take naught by his writ but be in mercy *pro falso clamore*. The charter was returned to John.[1]

HATCHARD *v.* ELLIS.

I.

Ad terminum qui preteriit.

Richard Hatchard brought a writ *ad terminum qui preteriit* against Roger Ellis and Alice his wife, and demanded certain lands and counted of the seisin of one John his ancestor. From him he made his descent to John and Daniel as to two sons and a single heir, since the lands were partible. There he made resort to one William the uncle of these John and Daniel and the brother of [the elder] John; and from William he made the descent to himself. And into these tenements he said that the aforenamed Roger and Alice had no entry save by one Cecily to whom the aforesaid John her uncle leased this land for a term that has expired.

Laufer defended and said:—Sir, whereas Richard says that that John leased the land for a term that has expired to Cecily, we tell you that John and Daniel leased it to that same Cecily in fee. Ready etc.

Cambridge. First of all either admit the lease alleged in our writ or deny it.

Laufer. I am not concerned to do either the one or the other, for I have said that John and Daniel, of whose seisin you have counted,

[1] *m.* 75*d.*

conte lesserent a C. et qe J. vostre auncestre morust de ceux tenemenz seisi et eux entrerent com filz et heir et lesserent etc.

Caunt. Dites dunqes qe J. ne lessa point a C. com nostre bref suppose qar si hom voelt trauerser un lentre il couint doner autre et si hom voille doner autre il couint granter ou dedire le primer *sic habitum.*

A ceo acord SPIGURNEL.

Staunh. Sire nous vous dirroms la verite celui J. soun auncestre lessa la terre auantdite a G. a terme et pus la esposa et morust seisi apres qi mort entrerent J. et D. com fiz et heir et lesserent a C. en fee prest etc.

Caunt. Sire vous auet bien entendu coment il vnt graunte qe J. lessa a C. etc. et alleggent pus un les en fee jugement si encontre lour grant demene a nul averement deiuent avenir sil ne moustrent especialte.

SPIGURNEL. Sil vssent grante le les par J. a C. a terme etc. et pus vssent allegge un les en fee par meme celui il nussent pas este resceu saunz especialte mes il alleggent le les estre fait par J. et D. fiz meme celui J. et lour lees pust il auerir encountre lour reconisance saunz especialte et hoc dixit pro lege.

Cant. La ou il unt conu qe J. lessa a C. com nostre bref suppose et diont qe pus devyndrent les terres en la main meme cesti Johan issint qil morust seisi en son demene etc. et dient qapres soun deces meme ceux J. et D. hors le lour seisine lesserent a C. en fee etc. la vous dioms qe C. lestat qele auoit del lees J. lour auncestre sauer a terme des aunz continua tanqe de lessa com nostre bref suppose prest dauerir.

Et les autres le reuers. Ideo ad patriam.

Note from the Eyre Roll.

The claim was :—Ricardus filius Ricardi Achard per attornatum suum petit versus Rogerum Elys de Cantuaria et Aliciam uxorem ejus quinque shopas cum pertinenciis in Cantuaria quas clamat ut jus et hereditatem suam Et in quas iidem Rogerus et Alicia non habent ingressum nisi per Beatricem que fuit uxor Johannis de Standone cui Johannes Achar (*sic*) consanguineus predicti Ricardi cujus heres ipse est illas dimisit ad terminum qui preteriit etc.

The plea was :—Rogerus et Alicia defendunt etc. et bene cognoscunt quod predictus Johannes consanguineus etc. aliquo tempore dimisit predicta tenementa predicte Beatrici ad terminum duorum annorum etc. quequidem tenementa post terminum illum revertebantur eidem Johanni qui inde obiit seisitus in dominico suo ut de feodo post cujus mortem successerunt ei quidam Johannes et Daniel ut fratres et heredes etc. eo quod tenementa illa sunt partibilia etc. Et dicunt quod predicti Johannes et Daniel postea feoffaverunt predictam Beatricem de predictis tenementis tenendis eidem Beatrici et heredibus suis in perpetuum Et hoc parati sunt verificare etc. et petunt

leased to Cecily, and that John your ancestor died seised of these tenements, into which John and Daniel entered as sons and one heir and leased etc.

Cambridge. Deny, then, that John leased to Cecily as our writ alleges; for if you want to traverse one entry you must allege another; and if you want to allege another, you must admit or deny the first. So it has been held.

SPIGURNEL J. agreed.

Stanhope. Sir, we will tell you the facts. This John, the demandant's ancestor, leased the aforesaid land for a term to G., and afterwards he married her; and he died seised; and upon his death John and Daniel, as sons and a single heir, leased to Cecily in fee. Ready etc.

Cambridge. Sir, you have heard them plainly admit that John leased to Cecily etc.; and now they allege a lease in fee. Judgment whether they can now make any averment against their own admission unless they produce a specialty.

SPIGURNEL J. If they had admitted the lease [for a term] granted by [the elder] John to Cecily and had then alleged a lease in fee granted by the same John, they could not have been received without producing a specialty; but they allege that the lease was made by [the younger] John and Daniel, sons of that same J.; and they can aver the lease of these latter against their admission without producing a specialty. And this he laid down as law.

Cambridge. Whereas they have admitted that John leased to Cecily, as our writ sets out, and have then said that these lands afterwards came back into John's hands so that he died seised of them in his own demesne, and that after his death the aforesaid John [the younger] and Daniel leased them in fee out of their seisin to Cecily etc., we tell you that Cecily held the estate which she had by the lease of John their ancestor, to wit, an estate for a term of years, until she leased as our writ alleges. Ready to aver.

And thereon was issue joined. So to a jury.

Note from the Eyre Roll—*continued.*

judicium si predictus Ricardus aliquid clamare possit in predictis tenementis etc.

Richard's replication, upon which issue was joined was:—quod predictus Johannes consanguineus etc. dimisit predicte Beatrici predicta tenementa ad terminum etc. que quidem Beatrix statum suum continuavit ut de termino etc. quousque tenementa illa dimisit predictis Rogero et Alicie. Et hoc petit quod inquiratur per patriam.

Richard was subsequently nonsuited.[1]

[1] *m.* 53.

[1]II.

Entre ad terminum qui preteriit ou les heirs entreront apres la mort cely qi lessa et lesseront en fee.

Richard Achard porta soun bref dentre vers Simound etc. et demaunda certeinz tenemenz en Cantebirs le queux Johan soun cosin lessa a une Beatrice a terme qe passe est et le fit cosin nomement frere soun ael et fist la descente de Johan a Daniel et a Johan com fitz etc.

Laufar. la ou vostre bref suppose qe nous sumes entre par Beatrice a qi Johan vostre cosin lessa a terme etc. nous vous dioms qe celui Johan auoit deus fitz Johan et Daniel parmi queux vous auez vostre descente de Johan vostre cosin qe entrerent apres la mort Johan et lesserent a ceste Beatrice en fee prest etc.

Caunt. Donqe couient qe vous diez qe Johan ne lessa point.

Laufar. Nous nauoms pas mester kar la ne pledoms mie la en droit kar nous vous dioms qe Johan et Daniel lesserent a Beatrice en fee et qe Johan vostre cosin morust saisi apres qy mort Johan et Daniel entreront etc. et lesserent a B. en fee.

Caunt. Auxi naturelment com en bref dentre ou home doune autre entre qe soun bref ne suppose couient trauerser lentre qe soun bref suppose auxi naturelment couient en bref dentre qe suppose lees trauerser le lees qe le bref suppose.

Spigurnel. Vous dites bien.

Stonore. Nous vous dirroms la verite cesti Johan soun auncestre lessa la terre auauntdite a terme des aunz a lauauntdite Beatrice et puis la esposa et morust saisi apres qy mort entrerent Johan et Daniel com fuitz et heirs et lesserent a Beatrice et a A. soun secund baroun en fee prest etc.

Caunt. Et nous iugment desicom il vnt conu qe Johan lessa a terme etc. et puis dient qe Johan et Daniel lesserent en fee qe couendra estre proue par especialite si encountre lour conisaunce saunz especialte al auerrement pussent auenir.

Spigurnel. Sil vousissent auer le lees Johan en fee le quel il vnt conu a terme il ne serrount resceuz saunz especialte mes il tendont dauerer le lees Johan et Daniel les fitz Johan en feo et ceo poount il bien pur ceo qil ne furent mie partie au primer les conu et ceo afferma il pur lei.

[1] Text of (II) from *a*.

II.

Entry *ad terminum qui preteriit*, where the heirs entered upon the death of the lessor and leased in fee.

Richard Hatchard brought his writ of entry against Simon etc. and demanded certain tenements in Canterbury which John, his cousin, had leased to a certain Beatrice for a term that had expired; and he counted of the seisin of this cousin, to wit, his grandfather's brother, and he made descent from him to Daniel and John his sons etc.

Laufer. Whereas your writ alleges that we entered by Beatrice, to whom your cousin John leased for a term etc., we tell you that that same John had two sons, John and Daniel, through whom you make your descent from your cousin John; and they entered upon John's death and leased in fee to this Beatrice. Ready etc.

Cambridge. Then you ought to deny that John [the elder] leased.

Laufer. We need not do that, for we are not pleading now to the right. We tell you that John and Daniel leased to Beatrice in fee, and that your cousin John [the elder] died seised; and that upon his death John and Daniel entered etc. and leased to Beatrice in fee.

Cambridge. Just as when a tenant sets up in proceedings under a writ of entry an entry other than that which the writ alleges, he must, as of course, traverse the entry set out in the writ, so equally of course must he traverse under a writ of entry a lease set out in the writ if he wishes to set up another lease.

Spigurnel J. That is good law.

Stonore. We will tell you the actual facts. This John, the demandant's ancestor, leased the aforesaid land for a term of years to the aforesaid Beatrice. Afterwards he married Beatrice and died seised. Upon his death John and Daniel entered as sons and heirs, and leased in fee to Beatrice and A., her second husband. Ready etc.

Cambridge. And we ask for judgment whether, since they have admitted that John [the elder] leased for a term etc., and have then set up that John [the younger] and Daniel leased in fee—an allegation which ought to be backed up by a specialty since it is in contradiction of their own admission—they can be allowed so to aver, without a specialty.

Spigurnel J. If they wanted to aver that John [the elder] leased in fee, after having admitted that he leased for a term, they would not be received to do so without a specialty. But they propose to aver that John [the younger] and Daniel, the sons of John [the elder], leased in fee; and that they are quite entitled to do, seeing that John and Daniel were not parties to the first and admitted lease.—And that he ruled to be the law.

Caunt. Donqe vous dioms nous qe cel estat qe Beatrice auoit du lees Johan a terme continua cele Beatrice com nostre bref suppose tauntqe ele lessa a vous etc. ut supra prest etc.

Et alii econtra. Ideo inquisitio etc.

[1]III.

De ingressu. Un Geoffray porta bref de entre uers un William en lez qeus il nad entre [qe] par une Beatrice a qi Johan son cosin qi heir etc. ces tenemenz lessa a terme qe passe est et fit la decente de Johan a Daniel et a Johan com a fiz pur ceo qe lez tenemenz sont departables et de ceus ij. pur ceo qil moururent sanz heir resortirent a Geffray qe ore etc.

Lauuf. La ou vous supposez qe Johan lessa a Beatrice a terme qe passe est nous vous dioms qe meme morust seisi en son demene com de fee apres qi mort entrerent Daniel et Johan qe hors de lour seisine enfefferent Beatrice en fee simple issi auoit Beatrice fee par le feffement Daniel et Jehan parmi qeus vous met conte et prest etc.

Caunt. Tant amonte qe Beatrice nentra qe par Jehan de qi lees etc. ausicom nostre bref suppose nous voloms aider nostre bref.

Lauf. Nous pledoms pas al entre enz al accion ut prius.

Spigurnel. Ceo qe vous dites put estre ou le lees dont il parnent cet accion pur quei il couendra trauerser le lees ou conustre le et puis plede a la manere qe ore fetes.

Pass. Nous conisons bien qe Jehan lessa memes lez tenemenz a Beatrice etc. et vous dioms ut supra prest etc.

Cant. Et nous jugement depuis qe vous auet conu le lees fet a Beatrice de qel lees nous parnons nostre accion et alleget qe ele auoit [fee simple] et Jehan et Daniel par mi qeus etc. et de ceo ne mostret nule especialte qe ceo testmoigne et prioms seisine etc.

Spigurnel. Sil eust conu le lees ausicom il fet ore et puis ussent allege qil auoint fee et par le fet meme ceci qe lessa en tel couendreit auer mostre especialte mes depuis qil allegent qil ont fee et par le fet ceus par mi qeus etc. il ne besoingne pas de especialte meus auerement.

Caunt. Qe Jehan nostre cosin lessa a Beatrice a terme qe passe

[1] Text of (III) from η.

Cambridge. Then we tell you that Beatrice continued the estate which she had by John [the elder's] lease, as set out in our writ, until she leased to you etc.—*as above.* Ready etc.

And thereon was issue joined. So let a jury etc.

III.

A certain Geoffrey brought a writ of entry against one William, saying that into the tenements claimed William had no entry but by one Beatrice to whom John, Geoffrey's cousin, whose heir Geoffrey was, had leased them for a term that had expired. He made descent from John to Daniel and John, as to sons, seeing that the tenements were partible; and from these two, because they died without heir, they resorted to Geoffrey, that now etc. Entry

Laufer. Whereas you suppose that John leased to Beatrice for a term that has expired, we tell you that he died seised in his own demesne as of fee, and that upon his death Daniel and John entered, who enfeoffed Beatrice out of their seisin in fee simple, so that Beatrice had the fee by the enfeoffment of Daniel and John through whom you are claiming; and that we are ready etc.

Cambridge. That amounts to admitting that Beatrice had no entry but by John, by whose lease etc, as our writ alleges. We will abide by our writ.

Laufer. We are not pleading to the entry, but to the action—*as before.*

Spigurnel J. What you say is consistent with the lease on which they base their action; consequently you must either deny or admit the lease, and then plead as you are now doing.

Passeley. We admit that John leased these tenements to Beatrice etc. and we tell you—*as above.* Ready etc.

Cambridge. And we ask for judgment, seeing that you have admitted the lease granted to Beatrice, on which lease we bring our action, and you allege that she had a fee simple, and that John and Daniel by whom etc. And you show no specialty in proof of this; and we pray seisin etc.

Spigurnel J. If he had admitted the lease, as he now does, and had then alleged that Beatrice had the fee by the lease of John the elder, in that case he would have to produce a specialty; but since he alleges that she has the fee by the deed of those through whom etc. he need not show a specialty, but may aver.

Cambridge. Ready etc. that John our cousin leased to Beatrice for

est laqele Beatrice cel estat continua qele Beatrice lessa a William uers qi le bref est porte prest etc.

Et alii e contra.

[1]PASSELEWE *v.* WYVELESHERGH.

[2]I.

Causa matrimonii prolocuti.

Joceus de Passele[3] et Elena uxor ejus [4]per attornatum suum[5] alias in curia domini regis[6] apud Westmonasterium coram [7]W. de B.[7] et sociis suis[8] petierunt versus Willelmum de Wynelesby[9] & Editham uxorem ejus j. mesagium cum pertinentiis in [10]Neutone juxta Siddingebourne[11] in quo iidem Willelmus et Editha non habuerunt ingressum nisi per Jordanum filium Gilberti le Baker cui predicta Elena idem dimisit causa matrimonii inter eos prolocuti qui eam duxisse debuit in uxorem & nondum eam duxerat. Et W. et E. [12]per attornatum suum ibidem venerunt &[13] placitaverunt & [14]posuerunt se hinc inde in [15]juratis patrie[15] & habuerunt diem [16]coram eisdem justiciariis[16] in octabis[17] sancti Michaelis [18]proximo preteritis[18] infra quem terminum summonitum [19]fuit id iter[19] & modo venerunt predicti Joceus & Elena per [20]attornatum suum[20] & optulit[21] se iiij. die versus predictos W. & E. &c de placito predicto & ipsi non venerunt & habuerunt diem hic postquam comparuerunt in curia ibidem ut predictum est[22] Judicium [23]predictum mesagium[23] capiatur in manu domini regis [24]& ipsi summoniantur[25] &c & ipsi summoniti[26] quod sint hic die Lune proximo post festum Sancti Michaelis audituri[27] inde judicium suum. Ad quem diem predicti Joceus & Elena [28]venerunt &[28] optulerunt se [29]iiij. die[30] versus predictum W.[31] & [32]ipse[33] non venit[34] & vicecomes testatur quod predictum mesagium captum est in manu domini regis & summonitus &c & super hoc venit predicta Editha & dicit quod[35] tenet idem mesagium cum predicto Willelmo [36]viro suo sibi & heredibus ipsius Willelmo[36] de dono cujusdam

[1] Reported by *a*, *aa*, *β*, *γ*, *δ*, *ϵ*, *ζ*, *η*, *θ*, λ (twice; in both Latin and Anglo-Norman). [2] Text of (I) from *γ* collated with *ϵ*, *ζ*, *η*, λ. Names of parties from E.R. The marginal note in *ϵ* is: 'Ubi carta proposita fuit que fuit simplex in se.' [3] Passeleu *ζ*; Passelewe E.R. [4–5] *ζ omits.* [5–8] *η omits.* [6] *ϵ adds* nunc *interlined.* [7–7] Will. de Berr. *ζ.* [9] Wisebegh *ζ*; Wyneberge *η*; Wenefeld λ; Wyveleshergh E.R. [10–11] Newentone *η*; S. λ. [11] Sudyngthorne *ϵ*; Singdinbroun *ζ.* [12–14] *η omits.* [13] *ζ adds* partes. [15–15] patriam *ζ.* [16–16] *η omits.* [17–22] ad quem diem prefati J. et E. obtulerunt se etc. predicti W. et E. non venerunt et habuerunt diem hinc postquam comparerunt in curia etc. λ. [18–18] *η omits.* [19–19] *η omits.* [20–20] attornatos suos *ζ.* [21] optulerunt *η.* [23–23] quod terra λ. [24–25] *ζ omits.* [25–26] *η* omits. [27] *from ζ*; *γ has* audiendi. [28–28] *ϵ omits.* [29–30] *ϵ omits.* [29–31] λ *omits.* [30–31] *η omits.* [32–34] ipsi non veniunt *η*; ipsi non venerunt λ. [33] *ϵ* de placito predicto et ipsi *ζ.* [34] venerunt *ζ.* [35] *η*, λ *add* ipsa. [36–36] &c. λ.

a term that has expired, which same Beatrice continued to have estate until she leased to William against whom the writ is brought.

And thereupon was issue joined.

PASSELEY *v.* WYVELESHERGH.

I.

Entry *causa matrimonii prælocuti.*

Jock Passeley and Ellen his wife aforetime by their attorney claimed from William of Wyveleshergh and Edith his wife in the Court of our Lord the King at Westminster before W. of B. and his fellow Justices a certain messuage in Newton near Sittingbourne together with the appurtenances thereof into which the said William and Edith had no entry save by Jordan the son of Gilbert the Baker, to whom the aforesaid Ellen demised it in consideration of a marriage agreed upon between them, which said Jordan ought to have married the said Ellen, but had not yet married her. And W. and E. appeared there by their attorney and pleaded and put themselves in respect of these matters upon a sworn jury of the country, and they were given a day by the said Justices in the Octaves of St. Michael last past, before which time this Eyre was summoned ; and now the aforesaid Jock and Ellen came by their attorney and presented themselves on the fourth day against the aforesaid W. and E. etc. touching the aforesaid plea ; and these came not, and had a day assigned here ; and afterwards they appeared here in the Court as aforesaid. Judgment that the aforesaid messuage be taken into the hand of our Lord the King. And let [W. and E.] be summoned etc. ; and they were summoned to be here on the Monday next after the Feast of St. Michael to hear judgment of them thereof. On which day the aforesaid Jock and Ellen came and presented themselves [until] the fourth day against the aforesaid W. who came not. And the Sheriff testified that the messuage aforesaid had been taken into the King's hand and that W. had been summoned etc. And thereupon comes the aforesaid Edith and says that she and the aforesaid William, her husband, hold that messuage to themselves and the heirs of that

Jordani le Baker [1]qui id eis dimisit in forma predicta & obligavit se & heredes suos ad warantizandum[1] & petit [2]quod defalta viri sui non sit ei prejudicialis quin ipsa[2] admittatur[3] ad defencionem juris sui & admittitur. Et predicta[4] Editha vocat inde ad warantizandum predictum Jordanum [5]in forma predicta[5] & habeat [6]eum hic die Martis proximo [7]post festum Sancte Fidis virginis[8] per auxilium curie &c & summoneatur in eodem comitatu[9]. Ad quem diem tam predicti Joceus & Elena quam predicta Editha [10]venerunt per attornatos suos &[10] similiter Jordanus [11]per[12] suum[13] &c venit et eidem Edithe[14] warantizat [15]& defendit jus suum quando[16] &c[17] & dicit [18]quod predicti Joceus & Elena nichil clamare possunt in eisdem tenementis dicit enim[18] quod eadem Elena dum sola fuit dedit & concessit eidem Jordano [19]predictum mesagium &c[19] tenendum sibi & heredibus suis [20]imperpetuum pro[21] xl. marcis[22] [23]stirlingis quas idem Jordanus ei dedit premanibus[23] & profert quandam cartam [24]sub nomine ipsius Elene[24] que hoc testatur & ex quo idem Jordanus per predictam cartam sufficientem habet evidenciam[25]
Judicium. de predicto feoffamento simpliciter facto [26]pro predictis xl. marcis[27] nec[28] predicti Joceus & Elena de predicta causa matrimonii prolocuti ullum[29] speciale factum ostendunt nisi tantum quod pretendunt in[30] verificacionem patrie quod non est admittendum contra factum predictum quod predicti Joceus & Elena cognoscunt. Consideratum est quod [31]predictus Jordanus inde sine die &[31] predicti Joceus & Elena nichil capiant [32]per breve istud[33] & sint in misericordia pro falso clamore.[34]

[35]II.

Entre causa matrimoni prolocuti ou le fet proue autre condicion.

[36]Johan de Passele et Elena uxor eius porterunt[36] un bref dentre vers William et Edith sa femme et dit [37]en le quex il naueient entre si noun par Jordan a qi Elena eux[37] lessa par encheson de matrimonio[38] entre eux parle qe la dut esposer et vncore ne la espose. Et [39]fuit casus talis[39] qe Jordan auoit auxi[40] femme et fut ceti bref primis porte en bank

[1]–[1] *η omits.* [2]–[2] *η omits.* [3] admitti *η.* [4] postea λ. [5]–[5] etc. *η.* [6]–[9] diem λ. [7]–[8] &c. *ϵ.* [8]–[9] *η omits.* [10]–[10] etc. *η.* [11]–[14] et λ. [12] *ϵ adds* attornatum. [13] summonitionem λ. [15]–[16] *ζ omits.* [15]–[17] *η omits.* [18]–[18] *ζ omits.* [19]–[19] *ζ omits.* [20]–[21] etc. λ. [21]–[22] etc. *η.* [23]–[23] *η*, λ *omit.* [24]–[24] *η omits.* [25] seisinam λ. [26]–[27] *η omits.* [26]–[28] habet evidenciam per cartam que testatur eandam recepisse pro eodem feoffamento xl. marcas etc. et λ. [29] nullum *ζ*, *η*, λ. [30] inde *ζ*, *η*, λ. [31]–[31] *η omits.* [32]–[33] from *ϵ*; &c. λ. [33]–[34] *ζ*, *η omit.* [34] *γ adds* suo. [35] Text of (II) from λ collated with *δ*. Head-note from λ. [36]–[36] Un W. et A. sa femme porterent *δ*. [37]–[37] le bref in quibus iidem (*sic*) J. non habuit ingressum nisi par Jordanum le Baillif a qi A. ceux tenemenz *δ*. [38] matrimoygne *δ*. [39]–[39] fut le cas tiel *δ*. [40] aunciene *δ*.

same William by the gift of a certain Jordan Baker, who granted it to them in form aforesaid, binding himself and his heirs to warranty ; and she prays that no default on the part of her husband may be to her hurt, and that she herself may be received to defend her right ; and she is received. And the aforesaid Edith vouches to warranty in form aforesaid the aforesaid Jordan. And she is to have him here on the Tuesday next after the Feast of St. Faith the Virgin, by the aid of the Court etc. ; and he is to be summoned in that same county. And upon the day appointed, the aforenamed Jock and Ellen as well as the aforenamed Edith came by their attorneys ; and in like manner comes Jordan by his attorney, and warrants Edith and defends his right etc. ; and he says that the aforesaid Jock and Ellen can claim naught in the said tenements, seeing that the said Ellen while she was sole gave and granted the said messuage etc. to the said Jordan to hold to himself and his heirs for ever in consideration of the sum of forty marks sterling, which he, Jordan, there and then gave to her ; and he produces a certain charter in the name of that same Ellen which testifies this. And because that same Jordan has in the aforesaid charter ample evidence that the aforesaid enfeoffment was made for the simple consideration of the aforesaid forty marks, and because the aforesaid Jock and Ellen produce no written evidence in support of the alleged consideration of a proposed marriage, but only their statement in their averment to the jury, which cannot weigh against the aforesaid deed which the aforesaid Jock and Ellen admit, it is adjudged that the aforesaid Jordan go away *sine die* ; and that the aforesaid Jock and Ellen take nothing by this writ, and that they remain in mercy for their false claim. Judgment.

II.

Entry *causa matrimonii prælocuti* where the deed shows other consideration.

John of Passeley and Ellen his wife brought a writ of entry against William and Edith his wife ; saying that these had no entry into the tenements but by one Jordan, to whom Ellen leased them by reason of a marriage that was arranged between them ; the said Jordan having contracted to marry Ellen, which contract he had not carried out. The facts of the case were that Jordan actually had a wife, and that the writ

ou [1]le tenant[1] allegga [2]nountenance en parcele[2] et le demandant le trauersa [3]et dit[3] tenant de lenter iour etc. et [4]lenqueste seront[4] a prochein iour William[5] fit defaute pur quei le petit cape issit puis vint le Record en cete Eire et William[5] fit autre fitz defaute. Suruint Edithe[6] et pria estre resceu a defendre son droit et fut resceu.[7]

Toudebi. Sire[8] vous veez bien coment cele qe portent ceti bref ad baroun qe meme le bref le suppose et soun bref voet qe le don fut fet par reson des Espousailes ou Jordan la mie espose la ou ele ne put autre baroun auer jugement du bref.

Cant. [9]Vous estes resceu a defendre vostre dreit et vous estes abatre pur quei nous demandoms jugement de vous cum[10] noun defenduz.

[11]Spigurnel. Celly qest resceu a defendre son droit ne perdra my les responses qe cherrount en ley.

Cant. Par comune ley par defaute del baroun serrunt les tenemenz qe furent del droit la femme perduz donqes fut remedie pus ordine par lestatut ele si ele viegne avant jugement rendu qele serra resceu a moustre son droit et son droit defendre et noun pas pour bref abatre.[11]

Toudebi. Vous veez coment ele a pris baron par soun bref dount tout ne vousissoms le bref chalanger la court labatereit qe ele ne poont mie auer ij. barrons a une fitz.[12]

Pass. Si Jordan le vousit[13] ore prendre il ne poit pas.[14]

Spigurnel. Ele nest [15]entre de prendre reson Jordan[15] mes de reauer la tere pur ceo qil ne la prist auant.

Toudebi. Si ieo vous grante un Annuete etc. si la qe ieo vous eie auance a benefice[16] de seint eglise [17]et vous pernet femme lanuite est esteint pur ceo qe vous este si qe vous ne poet mie auer benefices de seint eglise [18]auxi de sa etc. mes qant soun baron[19] serra mort si Jordan ne la voet espuser ele put ben user soun bref.

Cant. Jordan pur qi vous estes entre si ad espuse femme[20] tancum ele fut sole prest etc.

Stantone. Respondez au bref.

Toudebi. [21]Edithe voucha agarant Jordan qe serra somone etc. qui placitauit cum eadem sicut patet in Recordo.[21]

[1–1] *δ omits.* [2–2] noun tenure en partie *δ.* [3–3] par la qe le *δ.* [4–4] sur ceo enqueste se joynt *δ.* [5] J. *δ.* [6] M. *δ.* [7] *δ adds* et dit fut par. [8] *δ omits.* [9] *δ adds* en defaute vostre baron. [10] *δ adds* de. [11–11] *from δ; λ reads:—*

Spigurnel. A la comune lei par defaute du baron sereient les tenemenz qe furent du dreit sa femme perduz dunc par estate est taile qele seit resceu pur soun dreit defendre et noun pas pur bref abatre.

[12] foitz *δ.* [13] voleit *δ.* [14] *δ adds* pur quei etc. [15–15] pas en tour de prendre J. *δ.* [16] bienfitz *δ.* [17–18] *δ omits.* [18–19] auxi de ceste partie il ne la pout my esposer qar ele ne pout my auer autre baron et qant son baron qore est destourbier *δ.* [20] *δ adds* et prist femme. [21–21] M. vouche a garranti par eyde de ceste court J. de W. qi serra somons en ceste counte et stetit vocacio *δ.*

was originally brought in Bank, where the tenant alleged non-tenancy of a parcel and the demandant traversed the allegation and said that the tenant was tenant of the whole on the day etc.; and a jury was awarded for the morrow. William made default, wherefore the petty *cape* issued. Afterwards the record was sent to this Eyre, and William again made default. Edith intervened and prayed to be received to defend her right, and she was received.

Toudeby. Sir, you see plainly how [Ellen] that brings this writ has a husband as is admitted by her own writ, and that writ of hers says that the gift was made in consideration of marriage, and that Jordan has not married her. Since she cannot have two husbands we ask for judgment of the writ.

Cambridge. You are received to defend your right, and you are trying to abate the writ; wherefore we ask judgment of you for non-defence.

Spigurnel J. A woman that is received to defend her right shall not be deprived of any legal answer open to her.

Cambridge. Under the common law land that was of the wife's right was lost by the husband's default. A remedy for this was subsequently provided by statute, which enacted that if the wife came before judgment given she should be received in proof and defence of her right, but not in abatement of the writ.

Toudeby. It is admitted by her writ that Ellen has taken a husband, so that even if we did not desire to challenge it the court ought to abate it, for she cannot have two husbands at the same time.

Passeley. If Jordan wanted to take her now he could not do so.

Spigurnel J. She has not come here to get Jordan, but to recover her land because he did not take her before.

Toudeby. If I grant you an annuity until such time as I shall have procured you preferment to a benefice of Holy Church, and you take a wife, the annuity is extinguished, because you have made it impossible for you to hold a benefice of Holy Church. So here etc. But if upon the death of her husband Jordan refuse to marry her, then she may effectively use her writ.

Cambridge. Jordan, by whom you have entry, married a wife while Ellen was sole. Ready etc.

Staunton J. Plead to the writ.

Toudeby. Edith has vouched Jordan to warranty, and he will be summoned etc.

And Jordan defended against Ellen as may be seen in the Record.

[1]III.

Entre *causa matrimonii prelocuti* ou fut allegge qe la cause ne poeit mie se executer pur ceo qele fut coverture et pus fut demaunde de la femme ceo qele avoit de tesmoigner la cause ou ele mist avaunt fet qe voleit qele avoit vendu les tenemenz de tenir en fee pur xl. mars la quele chose ele ne poeit dedire par quei fut agarde qele ne preigne riens par soun bref pur ceo qil navoit riens par le fet qe tesmoigna la cause.

Un Adam et Beatrice sa femme porterent lour bref dentre *causa matrimonii prolocuti* vers Jordan le Bakere[2] de Newentone e Cecilie sa femme et counta.

Pass.[3] Il foundount lour action sur une cause qe Jurdan duit aver pris B. a femme et ne lad pas uncore pris et par soun bref demeyne si suppose ele qil ne la pout pas prendre pur ceo qe par soun bref ele se fet autri femme. Jugement si par cele cause[4] qele mesme ad defet action [5]puisse avoir.[5]

Hervi. Le bref voet qe vous ne lavez pas pris a femme et vous ne la dedites[6] paas et nous ne sumes pas a trier la nounabilite de la femme par quei dites outre.

Pass. Ele a pris baroun. Jugement si actioun etc. qe tut la volioms esposer nous nel purioms[7] mie fere.

Caunt. Pur quei ne feissez[8] vous quaunt vous purriez et vous le ne aves par fet. Jugement.

Spig. Vous preistes[9] par caas autre baroun issi qe en lui ne remeinet paas.

Ingham. Qil avoit femme pris avaunt qe nous feumes[10] espose prest etc. et issi sa defaute.

Pass. La ou il ount dit qele dona les tenemenz sur tele cause come lour bref suppose aad ele rien qe tesmoigne la cause.

Cant. Prest [11]dil averrer.[11]

Pass. Et nous jugement depuis qe soun fet tesmoigne le doun simple a Jurdan e ses heirs et qe pur cel doun ele resceut xl. marcs come soun fet demene voet. Jugement si a nul averrement pur autre chose qe soun fet ne voet deise estre resceu daverrer ou actioun puisse avoir.

Caunt. [12]Coment qe nostre fet si suppose[12] qele le lessa pur cel cause. Prest dil averrer.

[1] Text of (III) from *a* collated with *β*. Some portions of the head-note are barely legible. The note in *β* is :—Entre *causa matrimonii* ou piert qel ne fut mye resceu daverrer son bref pur ceo qe le fet voleit les tenemenz vendre simplement et pur xl. marcs. [2] Barker *β*. [3] Cant. *β*. [4] *β omits* cause. [5]–[5] put el aver *β*. [6] deditus *β*. [7] purum *β*. [8] li feitz *β*. [9] pristus *β*. [10] fuissoms *β*. [11]–[11] etc. *β*. [12]–[12] nostre fet supose *β*.

III.

Entry *causa matrimonii prælocuti* where it was alleged that the covenant to marry was void by reason that the woman was already *coverte*. Upon the woman being asked what evidence she had of such covenant she tendered a deed showing that she had sold the fee-simple of the land for forty marks. And as she could not gainsay this, and there was naught in the deed to show a covenant to marry, the Court gave judgment that she should take naught by her writ.

A certain Adam and Beatrice his wife brought their writ of entry *causa matrimonii prælocuti* against Jordan the baker of Newington and Cecily his wife, and counted.

Passeley. They make their cause of action the fact that Jordan was under promise to marry B. and has not yet married her; and yet by their own writ it is patent that he could not marry her, for their own writ admits that Beatrice has married another man. Judgment whether for non-performance of that of which she herself has made performance impossible she can have action.

Staunton J. The writ says that you have not married her; and that allegation you do not deny; and we are not here to try whether the woman is marriageable or not, so plead over.

Passeley. She has married a husband. Judgment whether action etc., for though we were willing to marry her we could not.

Cambridge. Why did you not marry her when you might have done? But you did not. Judgment.

Spigurnel J. It may be that you preferred some other husband, so that Jordan had no longer any option in the matter.

Ingham. That he had taken a wife before we were married, ready etc., and so he is in default.

Passeley. As to the allegation that she granted the tenements for the consideration set out in the writ she adduces no proof.

Cambridge. Ready to aver it.

Passeley. And we ask for judgment seeing that the deed [which she produces] shows an unconditional grant to Jordan and his heirs, and that for such grant she received forty marks; so her own deed shows. Judgment whether she ought to be received to aver other cause than that disclosed by her own deed, or can bring action upon it.

Cambridge. Our deed supposes that she leased upon this consideration. Ready etc.

Spig. Conisez primes le fet.

Caunt. Ceo est nostre fet mes nous voloms averrer etc.

Westcote. Et nous jugement desicom il ount conu le fet et pur taunt qant qest contenue en le fet et le fet tesmoigne[1] fee simple et par cause de achate qest tout autre qe vous ne donez si encountre soun fet demene qil aad conu pur autre cause qe le fet [2]ne doune[2] saver pur xl. mars puis averrer.

Hervi. Si tiel averrement soit resceu encountre soun fet qe doune certein cause issi peut chescune femme qe aad done ou vendu sa terre par laverrement dune tiel cause dereyner[3] les tenemenz venduz hors de meins les tenauntz en countre lour fet demeyne qe seroit encountre lei de terre.

Caunt. Ley de terre voet qe la ou femme doune terres ou tenemenz pur cele cause qil la espose et il ne la face mie qele eit soun[4] rescoveri et nous voloms averrer etc. *ut supra.* Jugement.

Judicium. Spig. Pur ceo qe vous avez conu vostre fet qe tesmoigne doun[5] simple et par autre cause qe cele qe vous tendez daverrer si agarde ceste court qe vous [6]ne preignez[6] rien par vostre bref.

[7]BOLDE *v.* JORDAN.

[8]I.

Cui in vita ante divorcium ou il demande jugement du bref par reson qil demande comune com demesne la ou ele nest qe appurtenance et ou dist fust qe le *quod permittat* ne gist si noun vers le tenant du soil.

Maude ke fut la femme Johan Bolde porta soun bref *cui ante devorcium contradicere non potuit* vers Johan le fitz Richard Jurdan e demanda deus acres et une rode de terre et deus acres de pree et de pasture [9]a communer[9] a viij. owailles ove les apurtenanncez etc.

Walingf. La ou ele[10] porte cestui bref et demaunde ceste pasture come demeine et suppose qe nous le porrom cum demeine rendre[11] nous vous dioms qe cest un enprovement issaunt dautri soil e voet estre demaunde par un de deus veies ou par reson de appendaunse[12] de fraunc tenement ou com disapendaunt[13] par especiaulte la queux ne poount chere en demene dount nous demandoms jugement.

[1] teumoygne β. [2–2] redone β. [3] de recoverer β. [4] β *omits* soun. [5] fee β. [6–6] pernez β. [7] Reported by α, $\alpha\alpha$, β, γ, $\gamma\gamma$, δ, ϵ, ζ, η, θ, λ, κ and $\kappa\kappa$. And see *Bug* v. *Buckland*, p. 167, *infra*. [8] Text of (I) from α collated with β and λ. Note from β. [9–9] β *omits*. [10] il β. [11] respoundre β. [12] appendancez β. [13] deppendaunt β.

SPIGURNEL J. First acknowledge the deed.

Cambridge. This is our deed, but we will aver etc.

Westcote. Since they have acknowledged the deed and consequently all that is contained in the deed; and since the deed testifies to [a conveyance of] the fee simple, and consequently to a purchase, which is quite different from what you allege, we ask for judgment whether, in opposition to their own deed, which they have acknowledged, they can now aver any other consideration than that set out in the deed, that is to say, forty marks.

STAUNTON J. If an averment like this were to be received in opposition to her own deed which sets out a certain consideration, there would be nothing to prevent any woman who has given or sold her land from recovering from the hands of the tenants the lands she has sold by proffering such an averment as this in opposition to her own deed; and this would be contrary to the law of the land.

Cambridge. The law of the land says that where a woman gives lands and tenements in consideration of a contemplated marriage and the marriage does not take place she should have her recovery; and we will aver etc. *ut supra.* Judgment.

SPIGURNEL J. Since you have acknowledged as yours a deed which testifies an unconditional grant for other consideration than that which you now offer to aver, this Court gives judgment that you take nothing by your writ. Judgment.

BOLD *v.* JORDAN.

I.

Cui in vita ante divorcium where judgment is sought of a writ by which right of common appurtenant is demanded as though it were demesne land. It was said that the *quod permittat* lies only against the tenant of the soil.

Maud that was wife of John Bold brought her writ of *cui ante divorcium contradicere non potuit* against John the son of Richard Jordan and demanded two acres and one rood of land and two acres of meadow and pasture to common eight sheep together with the appurtenances etc.

Wallingford. Whereas she brings this writ and demands this pasture as though it were demesne, and supposes that we can render it as demesne, we tell you that it is a profit issuing from the soil of another, and must be demanded in one of two ways—either as being appurtenant to a freehold or as having been assigned by specialty. It cannot come under the head of demesne, and therefore we ask judgment.

Caunt. Quel bref doit il aver si vous lui ostez le cesti bref.

Frisk. La ou homme cleime comune en autre soil si ad il ij. devisions ou a demander par bref de dreit ou par bref de possessioun[1] en cete cas luy est done le *quod permittat.*

Caunt. Le *quod permittat* gist vers le tenaunt [2]du soil[2] mes il nest paas tenaunt du soil.[3]

Malm. Jeo pose qe la comune en akun temps eust este graunte par le chief seignour ou par autre tenaunt des tenemenz et les tenemenz puis devenuz en divers meins par veie dalienacioun et il troeve tenant de la comune rien nad dil demene il covent qil use bref vers soun deforceour de la comune et vers lui ne puit il autre bref avoir.

Wescote [4]*ad idem.*[4] Nous veom qe un Simoun porta soun *precipe*[5] *quod reddat passagium ultra aquam* de tiel lieu et pur ceo qe le founz dil ewe ne fut paas a celui qe deforcea la passage einz avoit autre tenaunt du founz le bref fut agarde bon auxi par de za : Johan est tenaunt de sa comune et nient du soil [6]par qey il semble qe le bref gist vers lui.[6]

Note from the Eyre Roll.

The demandant was Matilda, wife of John Bolde of Northclyve. The tenants were John, son of Richard Jordan of Westclyve ; William, son of Richard atte Bocklond ; John, son of Richard of Bradmede ; and Robert and Edward, his brothers.

Matilda's count was :—quod ipsa fuit seisita de predictis terra prato tofto et quarta parte medietatis predicti messuagii cum pertinenciis in dominico suo ut de feodo et jure etc. et de predicta pastura ut de feodo et

[7]II.

Entre cui ante divorcium.

Malde qe fut la femme Johan de Bolde de N. porta son bref dentre *cui ante divorcium* vers [8]Johan fitz Ricard Jordan[8] et demanda par tiel bref precipe Johanni filio Ricardi Jurdan[9] quod etc. reddat Matillde que fuit uxor etc.[10] iij. acres et unam Rodam terre duas acras [11]prati et pasturam ad octo oues[11] cum pertinenciis in N. et W. precipe [12]Willelmo filio Ricardi de B.[12] quod etc. reddat eidem etc. unam acram[13] terre et

[1] posessiones β. [2–2] del demeigne λ. [3] β *adds* ergo etc. [4–4] λ omits. [5] bref λ. [6–6] from β. [7] Text of (II) from $\gamma\gamma$ collated with κ. [8–8] le fitz Jurdan de Westelme κ. [9] κ *adds* de Westelme. [10] Johannis de Bolde de N. κ. [11–11] pasture κ. [12–12] Rogero de Wekelond filio Willelmi κ. [13] rodam κ.

Cambridge. What writ ought she to bring if you oust her from this writ ?

Friskeney. Where a demandant claims common on another's soil he has two alternatives. He may make his demand either by a writ of right or by a possessory writ. In this particular case the *quod permittat* is open to him.

Cambridge. The *quod permittat* lies against the tenant of the soil, but here the defendant is not the tenant of the soil. Wherefore etc.

Malmerthorpe. I put the case that the right of common had been formerly granted by the chief lord or by some other tenant of the tenements, and that the tenements had subsequently come into different hands by alienation, so that someone is found to be tenant of the right of common that has naught of demesne. Such an one must be entitled to some writ against one that shall have deforced him, and he can have no other writ than this.

Westcote, ad idem. We saw that one Simon brought his *precipe quod reddat passagium ultra aquam* at such a place ; and because the watercourse was not in him that deforced the demandant of his right of passage, but another was the tenant of that watercourse, the writ was ruled to be good. So here. John is tenant of his right of common but not of the soil, and so it seems that this writ lies properly against him.

Note from the Eyre Roll—*continued.*

jure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo inde expletias ad valenciam etc. Et in que etc. Et inde producit sectam etc.

The defendants made default after default, and judgment was at last given that Matilda ' recuperet seisinam suam de predictis tenementis versus predictos Johannem et alios per defaltam etc. Et iidem Johannes et alii in misericordia etc.' [1]

II.

Entry *cui ante divorcium.*

Maud that was wife of John Bold of N. brought her writ of entry *cui ante divorcium* against John the son of Richard Jordan ; and this same writ by which she made her demand ran thus : ' Command John the son of Richard Jordan that etc., he render to Maud that was wife etc. three acres and one rood of land, two acres of meadow and pasture for eight sheep, together with the appurtenances, in N. and W. Command William the son of Richard of B. that etc. he render to the same etc.

[1] *m.* 4*d.*

pasturam ad [1]unam ouem[1] cum pertinenciis in B.[2] quod clamat esse jus etc.[3] in quo[4] iidem Johannes et W. non habent ingressum nisi per predictum J.[5] quondam virum ipsius Matilde qui illa etc. cui ipsa ante divorcium inter eos celebratum contradicere non potuit ut dicit etc.

Walingford. Jugement du bref desicom son bref veot precipe quod reddat pasturam ad octo boves en supposaunt qe la pasture chiet en demene par la ou ceo ne put estre rendu neo en demeygne estre si a tiel bref deit il estre respondu.

Inham. En un bref de auoweson de eglise si dirretz vous *precipe quod reddat* et si ne chiet il mye en demeigne par mesme la reson par de sa.

Hert. la serra[6] porte vers le patron qe put rendre et auetz illoqes tenant mes icy est nient le bref porte vers le tenant de soil qar la auerez le *quod permittat* mes vers estrange ne mye qar il ne pout estre tenant de la comune [7]et del[7] demene.

Malb. si jeo ay comune en vostre soil un estrange occupe la comune et moy desturbe et est seisi [8]et me tyent hors de cele comune et son fitz moun fitz[8] et issy auant aille qe[9] ne poetz auer breve de possession il[10] couent auer *Precipe quod reddat* ou ieo serray saunz recouerir qar le deforceor nest pas tenant de soil.

Toudebi il fait a distincger ou il couent qe il soit occupour ou seygnour du soil si[11] vers occupour ne git ceo bref issi chargereit il autre soil ou le seygnour ne fut pas partie qar ne serreit forsqe un profit a prendre en autre soil si vers le tenant de soil la git le *quod permittat.*

Stauntone[12] si le baron grante cele pasture qest du droit sa femme a altre si la femme soyt mys a son recouerer ou ele ne puet user bref de possession [13]on couuent[13] qele eyt le *precipe quod reddat* qar le tenant de soil la ne desturba poynt pur quei ele ne puet user le *quod permittat.*

Westcote.[14] Jeo vy ou un homme porta son bref *quod reddat passagium ultra aquam* qe fut oltre autre[15] ewe demande fut sil fut desturbe per cely a qi fontee de ewe fut et fut dit qe non eynz par estranger[15] vers qi le bref est porte par quei fut agarde le bref bon auxi en ceo cas.

Herui sil neyt cesti bref il couent qe vous ly donez autre qar saunz recouerer [16]neo deit ele estre.[16]

[1–1] viij. oves *K.* [2] W. *K.* [3] et hereditatem suam *K.* [4] que *K.* [5] *K adds* le Bold. [6] *K adds* le bref. [7–7] en *K.* [8–8] et ieo hors de grant tenps et mon fiz et son fiz *K.* [9] *K adds* ieo. [10] *K adds* moy. [11] *K omits.* The following part of *Toudeby's* speech is very obscure. The meaning is probably as given on the opposite page. [12] *Cant. K.* [13–13] il couient *K.* [14] *K adds* ad idem. [15] altri *K.* [16–16] ne serra el mie *K.*

one acre of land and pasture for one sheep, together with the appurtenances, in B., which [Maud] claims to be her right etc. into which the said John and W. have no entry but by the aforesaid J. that was formerly the husband of the said Maud the present demandant whom she says that she could not contradict before the divorce effected between them.'

Wallingford. Judgment of the writ whether she ought to have answer to such a writ, seeing that her writ runs *precipe quod reddat* pasture for eight sheep. Whereby she supposes that a right of pasture is of the nature of demesne ; whereas it cannot be rendered, and cannot be demesne.

Ingham. In a writ for the advowson of a church you would say *precipe quod reddat*, and yet an advowson does not rank as demesne. And the same holds good here.

Hartlepool. In that case the writ is directed to the patron who can render, and you have a tenant there, but in this case the writ is not brought against the tenant of the soil, against whom you would have the *quod permittat* ; but against a stranger you cannot have it ; for he cannot be tenant of the common and of the demesne.

Malmerthorpe. If I have common in your soil and a stranger occupy my common and oust me and become seised and keep me out of such common, and his son [keep out] my son, and so on, so that I cannot have a possessory writ, I am entitled to have a *precipe quod reddat*, else, as the deforciant is not tenant of the soil, I shall have no recovery.

Toudeby. To ascertain the right cause we must distinguish between an occupant and the lord of the soil. Against an occupant this writ does not lie, for, if it did, the soil of another, the lord of which was no party to the action, might be affected by the recovery of a *profit à prendre* therein. Against the tenant of the soil the *quod permittat* lies.

Staunton J. If the husband grant this pasture which is his wife's right to another, then if his wife be put to her recovery in circumstances in which she cannot have a possessory writ she is entitled to have the *precipe quod reddat.* It was not the tenant of the soil who ousted her, and so she cannot have the *quod permittat.*

Westcote. I remember where a man brought his writ of *quod reddat passagium ultra aquam* that was the water of another [than him against whom the writ was brought] and he was asked if he that had hindered him were the lord of the water course, and he said that it was not so ; but that he was hindered by a stranger, against whom he had brought his writ ; and the writ was thereupon ruled to be good. So in this case.

Staunton J. If you say she ought not to have this writ you must give her another, for she ought not to be left without right of recovery.

[1]III.

En porte qe pasture a viij. brebiz seit demande par *precipe quod reddat* uers celi qi nest pas seisi de soil etc.

Maud qe fut la feme Johan de Coltone [porta] son bref vers Water de Hoptone et demanda iij. acres de terre et iij. acres de pre et de pasture a viij. brebiz en C. et conta de sa seisine demene de la terre et de pre en son demene com de fet et de droit et en les qeus il nad entre sinon par lauantdit Johan iadiz son baron a qi ele auant le divors.

Walingford. Vous demandez vers nous terre pre et pasture a viij. brebiz par *precipe quod reddat* en supposant qe la pasture est chose qe chet en demene qe put estre rendu laqele pasture nest forsqe un profit a prendre en altri soil en qel cas le *quod permittat* est done jugement de bref.

Ingham. Auoweson nest pas chose qe chet en demene et si la poet demander par *precipe quod reddat* et estre ceo le *quod permittat* est done uers celi qest seignour de soil et vous nauet reson en le soil per quei si nous ne seioms eide par cet bref nous sumus sanz recouerer.

Toudebi. Leqel qe comune seit apend ou par especialte et seit aliene uers celi qest entre par alienacion le *precipe quod* [*reddat*] ne put encountre nule foren girir qar ceo serreit a recouerir un profit uers celi et en le soil celi qi nest pas partie.

Wescote. Altrefez e venue en court tel bref estre porte *precipe quod reddat passagium ultra aquam de C.* a qel bref fut distincte leqel le fountz de ewe fut a celi uers qi le bref fut porte ou a altre et pur ceo qe conu fut de partie qe le fountz ne fut pas a celi uers qi le bref fut porte ensi le fountz ust este soen le *quod permittat* ust git uers celi et non pas altrement le *precipe quod reddat* fut agarde bon et ausi de cete part.

Stauntone. Si Water ne die qil seit seignour de soil de la pasture en qel cas le *quod permittat* git uers ly nous agardoms le bref bon.

Caunt. Nous demandoms la vewe.

Et habuit.

[2]IV.

Maud qi fut la feme John Bold porta son bref dentre vers William de Biggelonde et demanda un mes iij. rodes de terre et pasture a x.

[1] Text of (III) from η. The text of θ is almost identically the same. [2] Text of (IV) from ζ.

III.

Showeth that pasture for viij sheep may be claimed by a *precipe quod reddat* against one that is not seised of the soil etc.

Maud that was wife of John of Colton brought her writ against Walter of Hopton and demanded three acres of land and three acres of meadow and pasture for eight sheep in C., and she counted of her own seisin of the land ; and, as to the meadow, that it was her demesne as of fee and right ; and she counted that Walter had no entry into them but by the aforenamed John that was formerly her husband whom she [could not contradict] before divorce effected between them.

Wallingford. You are demanding from us by a *precipe quod reddat* land, meadow and pasture for eight sheep, and so are supposing that the pasture is demesne which can be rendered, whereas that same pasture is naught but a *profit à prendre* in the soil of another, and in such case the *quod permittat* is the proper writ. Judgment of the writ.

Ingham. An advowson does not fall within the definition of demesne, and yet you can claim it by a *precipe quod reddat.* Again, the *quod permittat* lies against him that is lord of the soil, and you have naught in the soil ; consequently if we are not allowed to avail ourselves of this writ we are without recovery.

Toudeby. Whether common be appendant or granted by specialty or have been alienated in favour of one who has entered by such alienation, the *precipe quod reddat* cannot lie against a stranger, otherwise a profit might be recovered against him in the soil of one who was no party to the action.

Westcote. We have had a writ in this court running *precipe quod reddat passagium ultra aquam de C.*, and there the argument turned upon the question whether the watercourse belonged to him against whom the writ was brought or to another. It was admitted by the parties that the watercourse did not belong to him against whom the writ was brought. If the watercourse had been his the *quod permittat* would have lain against him, but not otherwise. The *precipe quod reddat* was ruled to be good. And so here.

Staunton J. If Walter do not say that he is lord of the soil of the pasture, in which case the *quod permittat* would lie against him, we rule the writ to be good.

Cambridge. We demand a view.

And he had it.

IV.

Maud that was wife of John Bold brought her writ of entry against William of Bigland and demanded a messuage, three roods of land and

owalis od les apurtenances en B. et dit qele fut seisie etc. de la pasture come de fe et de droit etc. et fut le bref tel precipe etc. quod reddat Matilde que fuit uxor etc. unum messuagium iij. rodas terre et pasturam ad x. oves cum pertinenciis etc.

Bacon. Jugement du bref qar le bref veot quod reddat unum messuagium iij. rodas terre et pasturam etc. en supposant qe la pasture demene ou il nest mie demene jugement du bref.

Cant. Home avera *precipe quod reddat advocationem ecclesie etc.* et si nest ceo mie demene etc.

Frisk. Vous demandez ceste pasture par un *precipe quod reddat* auxi come ceo fut demene ou naturalment jireit *quod permittat.* Jugement du bref.

Malb. Le bref en cas est assez bon qar si un home moi enfeffe de certeinz tenemenz ensemble oveske la pasture a x. bestes qi est seygnur du soil et jeo de ceo devie seisi jeo ai une feille qi est mon heir et seisie apres ma mort prent baron le baron aliene outre les tenemenz oveke la pasture a un autre qi est seygnur du soil ou la pasture est et le baron devie el dirra en son bref *precipe etc. quod etc. reddat terram et pasturam etc.* pur ceo qil nest mie seygnur du soil ou la pasture est qar sil vous deforce igist *quod permittat etc.* vers un autre gist *precipe quod reddat.*

West. ad idem il nous soveint coment ala court sumes ascon tens en grant debate par un tel bref *precipe etc. quod reddat tali passagium ultra aquam* ou fut demande profit en autre soil et memes les resons furent aleggez dune parte et dautre qi ore sunt icy ou au dreine fut demande si celi vers qi etc. fut seygnur du feus de leue ou il demanda cest passage fut dit qil ne fut mie seygnur par qei fut agarde adonqes qe le bref fut bon auxi par de scea.

Et stetit breve par STANTONE.

[1]V.

Cui in Vita de pasturage a certeins bests vers tenant del profit & nient tenant du soil.

Maude qe feust la femme Jon de Northclyve[2] porta le *cui in vita* vers Jon le fitz Jordan & demanda ij. acres de terre i. acre de pree et la pasture a viij.[3] brebitz et vers un autre par autre *precipe* i. acre de

[1] Text of (V) from γ collated with ϵ and $\kappa\kappa$. [2] *from* ϵ; N. γ. [3] vyt ϵ.

pasture for ten sheep together with the appurtenances in B., and she said that she was seised of the pasture as of fee and right etc.; and the writ was after this wise :—*precipe etc. quod reddat* to Matilda that was wife etc. one messuage, three roods of land and pasture for ten sheep together with the appurtenances etc.

Bacon. Judgment of the writ; for the writ says that William is to render one messuage, three roods of land and pasture etc., supposing that the pasture is demesne, whereas it is not demesne. Judgment of the writ.

Cambridge. A man may have a *precipe quod reddat* for the advowson of a church, and yet an advowson is not demesne.

Friskeney. You are demanding this pasture by a *precipe quod reddat* as though it were demesne, where a *quod permittat* is naturally pointed at. Judgment of the writ.

Malmerthorpe. The writ is good enough here, for if one that is lord of the soil enfeoff me of certain tenements together with pasture for ten beasts, and I die seised of this leaving a daughter that is my heir, and she being seised after my death take a husband, and the husband alienate the tenements and the pasture to another that is lord of the soil where the pasture lies and then the husband die, my daughter will say in her writ *precipe etc. quod etc. reddat terram et pasturam etc.* because he is not lord of the soil where the pasture lies, for if the lord of the soil deforce you the *quod permittat etc.* lies, but against another the *precipe quod reddat* lies.

Westcote, ad idem. He reminds us how but lately a writ of *precipe etc. quod reddat* demanding the right of passage across a stream gave rise to keen debate in this court. In that case a profit in another's soil was in demand, and the same arguments *pro* and *con* were relied upon as are relied upon here. In the event the question was put whether he against whom etc. was lord of the watercourse across which right of passage was demanded, and upon it being said that he was not the Court ruled that the writ was good. So here.

And the writ was allowed by STAUNTON J.

V.

Cui in Vita in respect of pasturage for certain beasts brought against the tenant of a profit that was not tenant of the soil.

Maud that was wife of John of Northclyve brought the *cui in vita* against John the son of Jordan, and claimed two acres of land, one acre of meadow, and pasturage for eight sheep. Against another party

terre[1] et la pasture a un[2] brebitz et counta de la seisine sa miere quaunt a la terre e pree en son demene come de fee & de droit & de la pasture come de fee & de droit.

Bacoun[3] defend & [4]dit[4] le bref veut *precipe quod reddat pasturam ad viij. oves* en supposaunt la pasture estre demene ou ceo est[5] profit a prendre en autre soil & ne chiet pas en demene ne ne peut pas estre rendu jugement del bref.

[6]*Waling. ad idem.* le *quod permittat* gireit meuz en ceo cas &c.[6]

Cant. vous nestes mie tenant de soil par qey le *quod permittat* ne gist mie vers vous par qey il covent qe cest bref soit meyntenu.

Westcote il semble qe le bref est bon vers cely qi est seisi de la pasture & nient del soil qar nous veysmes en un *precipe quod reddat passagium ultra aquam de B.* [7]pur ceo qe celui vers qi le bref feust portee ne feust tenant del founz del ewe si feust le bref meyntenu[7] & sil ust este tenant del founz del ewe il covendroit aver portee le quod permittat &c mes en ceo cas ore le bref nest mie portee vers celui qest tenant de soyl mes vers cely qe est seisi de la pasture par qey le bref est meyntenable.

Gold.[8] jeo ne vey mie qe vous pensez meyntenir vostre bref ne vostre accioun de demander ceste pasture si vous neiez especialte.

Westcote. Sire asez bien vers celui [9]qi nest mie[9] tenant de soil. Secus est sil demandast ceste pasture vers le tenant de soil[10] &c.

Peus les tenants firent defaute par qey issist le petit *cape* [11]pur lapparaunce &c. Al *cape* retourne seisine feust agarde.[12]

Nota. *Nota*[13] qe il avoit un autre *precipe quod reddat pasturam ad i. bovem* agarde bon sed nota qe le *precipe* ne gist james vers lui qi est seisi del soil de la pasture mes la gist le *quod permittat* & vers cely qi tient la pasture com un gros gist le *precipe* ut patet in isto placito per rationes.

[14]VI.

En un Cui in vita ele demanda un mees iij. rodes de terre et la pasture a xx. owailles oue les appurtenances en N. et counta qele meme

[1] pree ϵ. [2] vij. $\kappa\kappa$. [3] *Waling* $\kappa\kappa$. [4–4] demanda jugement du bref qar ϵ, $\kappa\kappa$. [5] $\kappa\kappa$ *adds* un. [6–6] $\kappa\kappa$ *omits.* [7–7] ϵ *omits.* [8] *Tild.* $\kappa\kappa$. [9–9] quest ϵ. [10–12] $\kappa\kappa$ reads: et pus fust ele noun suy mes un autre tiel fust vers un B. et voleit le bref *precipe sic quod reddat pasturam ad duos multones* et le bref estut pur les resons auantdits etc. mes en bank un bref dael fust porte qe voleit *precipe quod reddat pasturam ad CC. oues etc.* et le bref fust abatu mes la cause fust pur ceo qe cest un bref de possession et suppose qe launcestre de quy hom prent son title fust seisi en soun demene et cest une chose qe ne fust estre demande com demene. [11–12] etc. ϵ. [13] Note from γ and ϵ. [14] Text of (VI) from δ.

she claimed by a separate writ one acre of land and pasturage for one sheep. She relied upon the seisin of her mother, in demesne and as of fee and right in regard to the land and meadow, and as of fee and right in respect of the pasturage.

Bacon defends and says that the words *precipe quod reddat pasturam ad viij. oves* contained in the writ presuppose that the pasture [claimed] is demesne, whereas it is a *profit à prendre* on the soil of another; and as it is not in demesne it cannot be rendered. Judgment of the writ.

Wallingford, ad idem. A *quod permittat* would be the more appropriate writ in the circumstances.

Cambridge. You are not tenant of the soil, and so a *quod permittat* does not lie against you; and consequently this writ is rightly brought.

Westcote. I submit that this writ lies properly against a party that is seised of the pasturage only and not of the soil. We have seen an actual writ running *precipe quod reddat passagium ultra aquam de B.*, and it ran so because the party against whom it was directed was not tenant of the watercourse; and the writ was held to be a good one. If the party had been tenant of the watercourse, then the proper writ would have been a *quod permittat etc.* In this case here the writ is not brought against the tenant of the soil, but against him who is seised of the pasturage; and consequently the writ is good.

Goldington J. I do not see how you are going to support your writ or to maintain your claim to this pasturage, unless you have a specialty.

Westcote. As against one that is not tenant of the soil I submit, Sir, that we are entitled to succeed. It would be otherwise if we were claiming this pasturage from a tenant of the soil, etc.

The tenants subsequently made default, whereupon the petty *cape* issued for their appearance. Upon the return of the *cape* seisin was adjudged.

Note that another *precipe* to render pasturage for one ox was affirmed by judgment; and note further that the *precipe* [*quod reddat*] does not lie against him who is seised of the soil of the pasture, in which case the *quod permittat* is the proper writ. Against one who holds the pasture as a gross the *precipe* lies, as is made plain in the above case. Note.

VI.

In a *cui in vita* the demandant claimed a messuage, three roods of land, and pasturage for twenty sheep, with the appurtenances thereof in N. In respect of the messuage and the land she counted that she

estoit seisi en droit du mees et de la terre en son demene com de fee et de droit et en droit de la pasture ele fut seisi com de fee et de droit.

Bacoun. Jugement du bref qar voet *precipe quod reddat* qe suppose la pasture seit demene.

Bacoun [*sic*]. Homme vous dit qe vous demandez ceste pasture par le *precipe quod reddat.*

Westcote. Il vous souent sire coment en Baunk fuimes en ascum temps en grant debat par un tiel bref qe dit *precipe quod reddat tali passagium ultra aquam* ou il demanda profit en autri soille et memes les resons furent alleggez et fut le bref agarde bon pur ceo celly vers qi le bref fut porte ne fut pas tenant ne seignour du soil ne de founz del eawe.

[1]ESLING *v.* UFFINGTONE.

[2]I.

Entre ou il hi avoit omissioun fet de un en la decente et uncore le counte agarde bon pur ceo qil navoient nul fet de luy de mettre en barre et auxi pur ceo qe dit fut qe tel excepcioun ne gist si noun en bref de dreit.

Agnes la file Johan[3] de Cotingham porta un bref dentre vers Johan de Osingtone[4] et dit qe une Susanne sa auncestre fust seisie etc. de Susanne descendi etc. a [5]Agneis Maude Cristiene Johane et Dionise[6] etc. et dit qe Maude pur ceo etc. qele morust[7] etc. descendi le dreit[8] a Agneis[9] Cristiene Johane Amice[10] de Cristiene pur ceo quele morust etc. descendi etc. a Agneis[9] Jone et Amice.

Kingham[11] la ou il ad fet sa decente de M. et Crestiene pur ceo qil morirent etc. a les autres nous vous dioms qe Cristiene avoit un fitz Thomas qe lui survesquit de qi il ont fet omissioun jugement.

Cant. Coment useez vous cest excepcioun.[12]

[1] Reported by *a*, *aa*, *β*, *γ*, *δ*, *ζ*, λ (twice) and *θ*. Names of the parties from E.R. The demandant is described as Agnes the daughter of Ralph of Esling; the defendant as John of Uffington. [2] Text of (I) from *a* collated with *β*, *δ*, *θ* and λ. [3] Roger λ. [4] Essingtone *β*, λ; Cosniton *θ*. [5–6] Amice Cristiane Johane Amice (*sic iterum*) etc. λ. [7] devia *β*. [8] *θ adds* de sa pourpartie. [9] Amice λ. [10] Dionise *β*. [11] Hengham λ. [12] From this point to the end *θ* reads:—

Stonore. vous avez enterlesse Thomas a qi droit descendi et issint pledonz a vostre countz.

Malb. omission de saunke nest pas a la forme du counts qar de auxi come forme e le lavantdit counts quant Thomas est interlesse come la ou il est nome per consequens a la matir et isst al actioun en come bref de droit per quei voleitz etc. pas respondre.

Spigurnel. en un bref de droit omission de sank seroit al action mais cest bref mixt en droit et en possession ou lour challenge est eu au counte et non pas al action auxi come en bref tantsolement de possession etc.

was seised in demesne and as of fee and right; and in respect of the pasture that she was seised as of fee and right.

Bacon. Judgment of the writ, for a *precipe quod reddat* presupposes that the pasturage is demesne.

Bacon.[1] It is objected to you that you are claiming this pasturage by a *precipe quod reddat.*

Westcote. It will be within your recollection, Sir, how upon a demandant claiming a *profit à prendre* in another's soil by a writ running *precipe quod reddat tali passagium ultra aquam* a long argument arose on just the same points as are being taken now; and the writ was held to be good, because he against whom it was brought was neither tenant nor lord of the soil nor of the watercourse.

ESLING *v.* ESSINGTON.

I.

Entry; where the demandant omitted one from her descent, and, notwithstanding this, the count was ruled to be good for the reason that the tenant could produce no deed of such one in bar of the action; and it was said that such an exception could be taken only in a writ of right.

Agnes that was the daughter of John of Cotingham brought a writ of entry against John of Essington, and said that one Susanna her ancestress was seised etc. From Susanna the right descended etc. to Agnes, Maud, Christiana, Joan and Dyonisia etc. And she says that consequent upon the death of Maud, Maud's right descended to Agnes, Christiana, Joan and Dyonisia; and that consequent upon Christiana's death, Christiana's right descended to Agnes, Joan and Dyonisia, etc.

Kingham. Seeing that she alleges title by descent from Maud and Christiana, by reason of their death, to the others, we tell you that Christiana had a son Thomas who survived her, of whom Agnes says nothing. Judgment.

Cambridge. To what end do you make this objection?

[1] This remark seems wrongly attributed. It probably came from a Judge.

Stonore a labatement de vostre bref qe la ou vous avez countee qe Cristiene morust saunz heir etc. ele avoit un fitz Thomas qe sourvesqui et pout aver relesse et quiteclame.

Spig. qe fit Thomas vollez allegger nul fet de lui qe destrut sa[1] actioun.

Westec. cest excepcioun est tout a counte et nient al actioun qe tut abate cest counte vous poez resortir a novel bref et counter meilleur counte.

Malm. Chescun omissioun du saunk si chiet al actioun pur touz [jours] et ne gist si noun en bref de dreit.

Spig.[1] en un bref de cosinage devaunt Sire Rogger de Hegham[2] jeo estoy partie et chalenga un omissioun [3]du counte[3] et fumes chacez a dire pur quei nous feiemes[4] omissioun.

Et puis fut agarde qil deissont outre qe cest chalange ne gist si noun en bref de dreit.

Et pecierunt visum et habuerunt.

Note from the Eyre Roll.

John's plea upon which issue was joined was :—quo ad unam medietatem predicte acre terre bene defendit quod predicta Susanna mater etc. de cujus seisina etc. numquam fuit inde in seisina ut de jure suo sicut predicta Agnes dicit. Et quoad aliam medietatem predicte acre terre exceptis (*sic*) una pecia continente tredecim perticatas in longitudine et duodecim pedes in latitudine bene defendit quod ipse non habet ingressum in illa medietate

[5]II.

Cui in vita ubi facta fuit omissio in descensu.

[6]*Cui in vita* fust porte par Agnes de B. vers Jon Doffyntone[6] & demanda certeins tenementz &c. en les qeux [7]meyme cely J. navoit entre[7] sinoun par Rauf baron Susanne miere Agnes qi heir ele est &c qi ceus tenementz ly lessa a qi ele [8]ne pout countredire[8] & fit la decente de Susanne a v. filles cest a savoir &c & pur ceo qe checune morust &c saunz heir de son corps descendi le droit a ceste Agnes qi ore demande &c.

[1] *δ omits.* [2] *from* λ ; H. *α, β, δ.* [3–3] λ *omits.* [4] *from β ; α has* seioms. [5] Text of (II) from γ collated with ϵ. Head-note from ϵ. [6–6] Agnes de Bartone porta son cui in vita vers Johan de Offignytone ϵ. [7–7] *from* ϵ ; &c. γ. [8–8] &c. ϵ.

Stonore. To abate your writ. You have counted that Christiana died without heir etc. She had a son Thomas who survived her, who may have released and quitclaimed.

Spigurnel J. What did this Thomas do? Are you going to allege any deed of his which takes away the plaintiff's right of action?

Westcote. This objection goes entirely to your counting, and not to the action. Though your count be abated, you can still fall back upon a new writ and count a better count.

Malmerthorpe. The omission of any descendant extinguishes the right of action for ever; and such an objection cannot be taken except in a writ of right.

Spigurnel J. In a writ of cosinage before Sir Roger de Hengham, in which I was of counsel, I took exception to an omission in the counting, and we were driven to say definitely how such omission affected matters.

Then the Court ruled that they must plead over, for the objection was not maintainable save in a writ of right.

And they prayed a view, and had it.

Note from the Eyre Roll—*continued.*

excepta etc. per predictam Cristinam Samuel immo per quemdam Simonem de Grimeshamme etc. Et quo ad predictam peciam terre continentem tredecim perticatas in longitudine et duodecim pedes in latitudine bene defendit quod ipse non habet ingressum in illam peciam terre per predictam Cristinam immo per quendam Rogerum de Appeldre etc. et de hoc ponit se super patriam.

A jury was to be summoned; but the blank space left in the Roll for the completion of the record remains unfilled.[1]

II.

Cui in vita where an omission was made in the descent.

A *cui in vita* was brought by Agnes of B. against John of Offyngton. She claimed certain tenements etc., into which she alleged that the said John had no right of entry save through Ralph that was the husband of Susanna that was the mother of Agnes whose heiress Agnes was etc.; the said Ralph, whom the said Susanna could not contradict, having leased the said tenements to the said John. She made descent from Susanna to five daughters, to wit etc.; and because each one of these died etc. without heir of her body, the right descended to Agnes the present demandant.

[1] *m.* 21*d.*

King[1] defend & dit la ou vous avez countee qe de Cristine qi fust une des soers Agnes pur ceo qele morust saunz heir de son corps descendi &c la dioms nous qe meyme cele Cristine avoit un fitz Thomas qi lui survesqi de qi vous avez fet omissioun [2]dount nous demandoms[2] jugement &c.

Malm. de alegger omissioun de Thomas en cesti bref ne serrez respondre[3] si vous ne diez plus viz[4] qil survesqi e[5] relessa ou fist felonie ou acune autre chose qe pout esteindre nostre accioun mes ceo ne dit il mie par qey &c.

Stonore il le pout a counte abatre qar il ad counte qe de Cristine pur ceo qele morust saunz heir de son corps &c ut supra la dioms qe rien ne pout descendre a les soers si noun par mi T. del oure qil survesqi Christine de qi vous avez fet omissioun. Jugement de counte.

Malm. vous ne poez nient chalanger pur counte abatre qar checun omissioun de saunk[6] est en le droit qel omissioun covient qe vous preignez al accioun & nemie al counte abatre &c.

[7]III.

Cui in vita ou la omissioun du sanc fut chalange et ouste.

Agnes qe fut la femme Ricard de Elpynge porta soun *cui in vita* devers un Richard [8]de C.[8] et demanda certeinz tenemenz de la seisine[9] Sosanne sa [10]mere desendant et a li et un Cristiene com a ij files de C. pur ceo quele morust sanz heir etc. a Agnes[10] com a soer et heir [11]le dreit de sa pourpartie[11] et en les quez il[12] nad entre si noun par un W. baron Sosanne mere Agnes a qi ele etc.

Toud. La ou il fet la descente de C. pur ceo qele mourut saunz heir etc. nous vous dioms qe ele auoit un fitz Thomas par noun a qi le dreit de sa pourparti descendi de qi vous auet fet omission en la descente jugement.

Ingham. Volet ceo pur respons [13]et nous en parlerons.[13]

Stonore. Nous le mettoms al conte qest defectif.[14]

Cant. Checun chalange de omission est en le dreit et en le sank pur quey [15]covient qe vous leprenez la court le deit prendre al accion.[15]

West. Si ceo fut en un bref de dreit uncore acune chose serreit

[1] *Ingham* ϵ. [2–2] *from* ϵ. [3] rescue a cesty bref ϵ. [4] ceo est a dire ϵ. [5] ou ϵ. [6] ϵ *adds* si. [7] Text of (III.) from λ collated with ζ. [8–8] *from* ζ ; λ *has* etc. [9] mort ζ. [10–10] aunte et fit la descente de Susanne pur ceo qel morust sanz etc. descendi a cel Agnes et a Maud Christian Johane et Avyce com a v. soers et un heir de A. descendi pur ceo etc. a C. et M. A. et J. com a iiij. soers et un heir de J. pur ceo etc. descendi a C. M. et A. de C. pur ceo qe etc. descendi a M. et A. etc. de M. pur ceo etc. a A. qe ore demande ζ. [11–11] ζ *omits.* [12] cesti R. ζ. [13–13] ζ *omits.* [14] ζ *adds* et demandoms jugement. [15–15] il covient qe vous leprenez la coment court etc. le deit prendre et demandoms jugement ζ.

Kingeshemede defends and says: You have counted that the right descended to Agnes because Christiana that was one of the sisters of Agnes died without leaving heir of her body etc.; but we tell you that this same Christiana had a son Thomas, who survived her, whom you have omitted, and therefore we ask for judgment.

Malmerthorpe. You will not be answered under this writ if you merely allege the omission of Thomas, and allege nothing further, as, for example, that he survived his mother and executed a release, or that he committed felony, or did some other act that might have the effect of extinguishing our right of action; but no such allegation has been made, wherefore etc.

Stonore. The mere allegation of the omission is sufficient to abate the count. He has counted that from Christiana, dying without heir of her body, etc. *ut supra*; but we say that nothing can descend to the sisters except through Thomas, whom you have omitted, since he survived Christiana. Judgment of the count.

Malmerthorpe. You cannot, upon this ground, seek to have the count abated. Any omission in the descent goes to the right, and only entitles you to take objection to the action, and not to seek to abate the count, etc.

III.

Cui in vita where exception was taken to an omission in the descent and not allowed.

Agnes that was wife of Richard of Elpyng brought her *cui in vita* against one Richard of C., and demanded certain tenements of the seisin of her mother Susanna which descended to her, Agnes, and to one Christiana, as to two daughters. Upon the death of Christiana without heir, the right to Christiana's share descended to Agnes, as her sister and heiress; into which tenements she, Agnes, says that the said Richard of C. had no entry save through one William that was the husband of Susanna, the mother of Agnes, whom she etc.

Toudeby. She makes her descent from Christiana, who, she alleges, died without heir etc. Now we tell you that Christiana had a son, Thomas by name, to whom the right to Christiana's share descended, and this Thomas you have omitted in making your descent. Judgment.

Ingham. Are we to take that for your answer? If so, we shall have something to say to it.

Stonore. It is the exception we take to your count, which is bad.

Cambridge. Every allegation of omission goes to the right and the descent, and so you must know that the Court is bound to take what you say as your answer to the action.

Westcote. If this were a writ of right it would be a different matter,

mes nous sumes ci en bref de possession ou vostre desente est maueis et tout abatisoms[1] ceti bref pur ceo qe la desente est maueis uncore [2]purrez vous[2] auer autre bref et fere vostre dessente bon.

Cant. Jeo vous pose qe si[3] nous deffendisoms[4] en averrement[5] qil ni auoit nul tel Thomas et troue fut qe oil nous perdroms nostre accion et si[6] troue fut qe noun nous[7] recoueroms nostre demande pur quei [8]sil la voet user[8] il couent qil se tenent a ceo la.

Pass. Nostre chalange nest pas purement en forme[9] de omission einz est pur ceo qil i auoit un Thomas qe suruesquit Creistiene de qi il ad fet omission en ceti bref qest partie en la possession.[10]

[11]*Malbm.* A chalenger descente seit ceo en bref de dreit ou en possessioun qe alegge ascun persone qe tendreit estat si est a chalanger la descente pur omissioun en le saunk qest purement al accion pur ceo qe ceo est a chalanger le saunk par quai volez ceo pur repons.[11]

Spig. Un est a chalanger la omission[12] autre a chalanger la descente en le sank. Car omission est proprement en[13] bref de dreit et chalanger la descente put estre en bref dentre et de possession ou suffit a eus alegger un a qi le heritage avant vous poeit descendre et conta[14] coment il meme et Roger de Hegham plederent en un [15]bref de[15] cosinage ou le tenant allega un du[16] sank de qi etc. et [17]le demandant[17] fut chace a dire pur qei lentrelesser celi ne li[18] deit grever en contre le[19] chalange auxi en [20]ceti cas il couent si vous volez meintener vostre descente sil i auoit un tel ou ne mie il vous couent respondre et pus dire pur quei soun estre ne vous deit grever.[20]

Malm. Si vous volez cel omission mettre avant il couent qe ceo seit taunsoulement en un bref de dreit car il git naturelment si vous ne diez qe ceti de qi il ad fet omission survesquit[21] relessa et quiteclama [22]ou fit felonie[22] ou qil seit en pleine vie pur quei qe[23] vivant li [24]nous ne pussoms[24] rien demander [25]ou ascun autre chose die qe put ateindre nostre accion mais ceo ne ditez vous mie pur qei etc.[25]

Toud. A la forme ne put il james mettre car la forme est asset bon[26] et de ceo demouroms a vos jugemens.

[1] abaterez vous ζ. [2–2] poez ζ. [3] ζ *omits* si. [4] descendums ζ. [5] *from* ζ ; λ *has* enqueste. [6] *for* si ζ *has* en cas aler quites et. [7] ζ *adds* par reson. [8–8] *from* ζ. [9] ζ *omits* forme, leaving a blank space. [10] ζ *adds* jugement etc. [11–11] *from* ζ ; δ *omits*. [12] ζ *inserts* un. [13] Between *en* and *bref* ζ leaves a blank space. [14] ζ *adds* un counte. [15–15] ζ *omits*. [16] en le ζ. [17–17] ζ *omits*. The reading in the text is in some way corrupt; *tenant* is obviously required to make sense. [18] vous ζ. [19] son ζ. [20–20] autre cas si vous volez maintenir votre descente il covent qe vous respondez si tele il avoit et dire pur quai son estre ne vous deit grever ζ. [21] ad ζ. [22–22] ζ *omits*. [23] ζ *omits*. [24–24] ne poez james ζ. [25–25] qar autrement ne serrez resceu ζ. [26] ζ *adds* en quel maner qil fet prive sank et en cel manner ne put el james estre mise sil ne seit en un bref de dreit.

but this is a possessory writ with which we are dealing, and your descent is bad; and though we should abate this writ on account of your descent being bad, you can yet take out another writ and make a good descent.

Cambridge. Suppose that we replied by averring that this Thomas never existed, and that it were found that he did. In that case we should lose our action; while if it were found that he did not, we should be entitled to recover our demand. Consequently, if they want to use this exception at all, they must stand or fall by it.

Passeley. Our exception is not taken against the bare omission of Thomas; but we say that there was not only a Thomas, but a Thomas who survived Christiana; and him they have omitted in their writ, which is a possessory one.

Malmerthorpe. To challenge the descent either in a droiturel or possessory writ wherein some particular person claims estate is to challenge the descent for omission in the blood, and that is a challenge which goes directly to the action. This challenge of yours being, consequently, a challenge to the blood, do you abide by it as your answer?

Spigurnel J. To challenge an omission is one thing; to challenge the descent by blood is another. Omission is a proper matter of challenge in a writ of right. The descent may be challenged in a writ of entry or other possessory writ, where it is sufficient for the tenant to allege the existence of one to whom the succession might accrue in priority of the demandant. Then he went on to relate how he himself and Roger of Higham had once been of counsel in a writ of cosinage where the tenant alleged the existence of one of the blood whose claim would be prior to the demandant's; and the tenant[1] was compelled to show, in answer to the challenge, how the omission of this particular person was in no way prejudicial to his claim. So here, if you want to maintain your descent as set out, you must say whether there was or was not such a person as has been alleged; and then, if you allow that there was, you must show that his existence does not invalidate your claim.

Malmerthorpe. You can only avail yourself of this exception to the omission, except in a writ of right where it properly lies, if you allege of him to whose omission you take the exception that he survived, released and quitclaimed, or committed felony, or is still alive, and that, in consequence of his being alive, we are barred from making any claim, or allege some other fact which is fatal to our right of action; and you make no such allegations; wherefore etc.

Toudeby. Such an exception can never be taken to the form of the count. The form is good, and so we abide your judgment.

[1] See note 17 on opposite page.

STANT. agarda qil diseient outre ou qil atenderunt[1] la primer response.

Ingham demanda la veue etc.

Nota [2]par *Toud.* et *Hertl.*[2] qe omission ne git a la forme du conte ne james ne git pas proprement for qe en bref de dreit etc.

[3]ATTECHAPEL *v.* SIMOND.

Cui in vita. Jon le fitz Willem [4]ate Capele[5] & Simond son frere portent bref dentre[6] vers Thomas le fitz Jon[7] Simon[8] & demandent[9] iiij. acres de terre[10] en les queux il navoit entre si noun par Richard [11]ate Capele[12] jadys baroun Agnes la fille B.[13] aele[14] les avantditz Jon fitz[15] W. & Simond qi heirs ils sount[16] a qi [17]ele ne purra[18] countredire.[19]

Ingham[20] Jon nostre piere morust seisi de ceus tenementz [21]en son demene com [22]de fee[22] apres qi mort nous sumes entre [23]com fitz & heir[23] & seisi sumes [24]de ceus tenementz[25] & sumes denz age & prioms nostre age.

Malm. la ou vous ditez qe vous entrastes[26] apres la mort[27] vostre piere[28] nous voloms averrer [29]nostre bref[29] qe vous entrastes par Richard [30]atte Capele[30] com nostre bref suppose.

Ingham [31]nous sumes en ses tenementz cum en nostre heritage e sumes dedeynz age par quei[32] nous ne pooms a cest averrement [33]estre partie[34] avant nostre age et prioms etc.

Malm. si nous grantasoms vostre age nous abateroms nostre bref demene qar nous supposoms par nostre bref qe vous entrastes par Richard ate Capele & si nous grauntasoms vostre age com a cely qest entre par successioun [35]apres la mort Jon vostre piere[36] nous grauntereoms [37]en taunt qe vous nentrastes pas par Richard com nostre bref suppose[38] pur quei etc.[39]

Cant. si vous [40]eiez porte maveys[40] bref nous ne devoms mie acomprier[41] vostre fol[42] purchas qar si nous dusoms ore pleder[43] a cest

[1] se trendreint ζ. [2–2] *from* ζ. [3] Reported by γ, δ, ϵ, ζ, λ, μ. Text from γ collated with δ, ϵ, ζ, λ. [4–5] Attechapelle δ. [5] Chapel ζ. [6] *from* δ, ζ, λ; γ *omits.* [7] δ *omits.* [8] ϵ, ζ *omit.* [9] δ *adds* vers ly. [10] δ *adds* oue les appurtenances en W. [11–12] Attechapelle δ. [12] Chapel ζ. [13] Danyel de B δ; Daniel de Barding ζ; Daniel λ. [14] ael δ; miere ϵ. [15] λ *omits.* [16] δ, ζ *add* qi ceux ly lessa. [17–19] &c. ζ. [18] poeit ϵ; δ *adds* en sa vie. [20] δ *and* λ *insert here* Sire nous vous dioms qe; ζ inserts nous vous dioms qe. [21–25] com de nostre heritage δ. [22–22] &c. ϵ. [23–23] com en nostre heritage ζ. [24–25] ζ *omits.* [26] ζ *adds* com heir. [27] ϵ *adds* Johan. [28] δ *adds* com fitz et heirs. [29–29] δ *omits.* [30–30] *from* ϵ; &c. γ. [31–32] *from* ϵ *and* ζ. [33–34] atteindre δ; attendre ζ. [35–36] λ *omits.* [37–38] le revers de nostre bref λ. [38] ϵ *adds* par quei &c. [38–39] *from* ϵ *and* ζ. [10–40] portez un ζ. [41] comparer δ, λ; comprire ζ. [42] maluoys δ; mauvoys ζ. [43] respondre ζ.

STAUNTON J. ruled that they must answer over or abide by their first answer.

Ingham demanded a view etc.

Note that the exception of omission does not lie against the form of the count, nor does it ever lie properly except in a writ of right, *per Toudeby* and *Hartlepool.*

ATTCHAPEL *v.* SIMON.

John the son of William Attchapel and Simon his brother bring a writ of entry against Thomas the son of John Simon, and demand four acres of land into which, they say, he had no right of entry except through Richard Attchapel that was late the husband of Agnes, that was daughter of B. and grandmother of the aforesaid John the son of William and Simon, who are her heirs, which Richard the said Agnes could not contradict. *Cui in vita.*

Ingham. John, our father, died seised of these tenements in his demesne as of fee. Upon his death we entered as sons and joint heirs, and we are seised of these tenements. We are under age, and we pray our age.

Malmerthorpe. You allege that you entered upon the death of your father. We will aver our writ that you entered through Richard Attchapel, as our writ alleges.

Ingham. We are in these tenements as in our heritage, and we are within age, and consequently cannot be parties to this averment before our age; and we pray etc.

Malmerthorpe. If we were to allow your age we should abate our own writ, for by our writ we say that you entered through Richard Attchapel; and to grant your age as to those who have entered by succession upon the death of their father John, would be tantamount to allowing that you did not enter through Richard, as our writ alleges; wherefore etc.

Cambridge. That you have brought a bad writ is no reason why we should be penalized for your maladroitness. If we could be made to

entre denz age[1] vous chacereiez[2] checun enfant [3]denz age [4]par un faus bref[5] a[6] respondre de son heritage denz age [7]qe serreit encontre lei.[7]

Westcote si vous seez entre par Richard com le[8] bref suppose dount nest ceo mie vostre heritage par quey nest mie countre ley &c.

Hervi[9] Jeo voy meschief dune part & dautre qar[10] si la parole [11]demorge &c[12] donqes demorra la parole sur abatement de bref [13]& jeo vey qe sil soit [14]a perdre[15] son heritage duresse serroit qil respondreit denz age.[16]

[17]*Malm.* si nous grauntoms le age nous abateroms nostre bref &c. ut supra.[17]

Hervi[18] jeo vy[19] en un cas qe le tenant en un precipe quod reddat pria eide qe la court doffice graunta leyde & si le demandant le grauntast[20] il abatereit[21] son bref demene. Jeo vy aussi qe labbe de Wasdone[22] fust emplede &c [23]de certeinz tenementz[23] & voucha a garantir un A. &c par le fet son auncestre & le vouche dist qil ne deust garantir qar les tenementz demandez furent donez a son auncestre en fee taille & rien ne fust decendu par mi lui & issint avoit accioun[24] a demander mesme les tenementz [25]par la fourme[26] & la fust agarde qil garauntist sauve a ly[27] sa accioun & sil ust garanti de gree il ust este barre[28] daccioun a touz jours.[29]

Malm. nous ne pooms dedire qil nentra par successioun apres la mort Jon son piere [30]par qey sire abatez cest bref.[30]

Hervi Et[31] si agard [32]la court qe vous ne pregnez[32] rien par vostre bref &c.[33]

Malm. suffrist le bref abatre [34]de gree[34] pur ceo qil voleit meuz porter autre bon bref qe la parole ne demorast &c taunt qal age le tenant sur abatement de bref.

[1] ϵ and ζ *add* il ensuyroit qe par un fals bref. [1–2] si ensuereit qe home chacereit λ. [3–6] ϵ *omits.* [4–5] ζ *omits.* [7–7] *from the other texts.* γ *has* &c. [8] vostre ζ. [9] Stant. δ, ζ, λ. [10] ϵ *adds* jeo voi qe. ζ *adds* et jeo voie. [11–12] targe tantqe al age δ, ϵ, λ ; targe tantqe al age lenfant ζ. [13–16] Et dautre part si ceo seit donqe ensuereit qil responde avant son nounage (*sic*). Adhuc Hervi et (*sic*) *Malm.* Et la ou vous dites qe si vous grantissez lage vostre bref abatereit quid mirum δ. The report in δ ends here. si ceo seit soun heritage si ensuereit qil respondreit avant soun age λ. [13–18] et dautre part si ceo seit son heritage donqe ensuereit qil responde de son heritage durant son nounage. Adhuc Herui a *Malm.* la ou vous dites qe si vous grantassez lage vostre bref abatereit ζ. [14–15] *from* ϵ. [17–17] λ *omits.* [18] λ *adds* ad idem. La ou vous ditez qe si vous grantasset le age qe vostre bref abatereit. [19–19] ϵ *omits.* [20] ust grante ϵ. [21] ust abatu ϵ. [22] Wardone ϵ, ζ, λ. [23–23] from ϵ and ζ; γ *has* etc. [24] ζ *adds* par bref de forme de doune. [25–26] par quei il dit qil ne dust targer &c ζ. [26] ϵ *adds* par quei il dist qe il ne dust garantir ; λ *adds* pur qei il dit qil ne dut mie garantir. [27] ζ *adds* autre foiz. [28] forclos ζ, λ. [29] ζ, λ *add* auxi de cete part si la court agarde qe le demandant atende lage le bref ne se abatera point paraventure. [30–30] et sur ceo abatez mon bref ζ ; λ *omits.* [31] ζ *adds* del houre qe vous ne poez dedire. [32–32] *from* ϵ ; &c. γ. [33] ζ *adds* mes seez en la merci &c. ; λ *adds* mes seet en la merci et sic nota qe. [34–34] ζ *omits.*

plead to this writ while we are under age you might, by an illegal writ, drive every infant to answer for his inheritance while he was under age, which would be contrary to the law.

Westcote. If you have entered through Richard, as the writ supposes, then this is not your inheritance, and so there is nothing illegal etc.

STAUNTON J. I see a hardship both ways ; for if the objection be allowed the writ is abated, and [on the other hand] I see the hardship of making one whose inheritance is imperilled answer while he is under age.

Malm. If we allow their age, we shall abate our writ etc.—*as above.*

STAUNTON J. I saw in a case that the tenant in a *precipe quod reddat* prayed the Court for its official aid, as if the demandant should allow what they asked he would thereby abate his own writ. And in another case I saw that the Abbot of Warden was impleaded etc. for certain tenements and vouched one A. etc. to warranty under the deed of his ancestor, and the vouchee said that he ought not to warrant, for the tenements claimed were given to his ancestor in fee tail and nothing had descended to him ; and so he was himself entitled to bring an action by writ of formedon for these same tenements ; but the Court ordered him to warrant, his right of action being saved to him. If he had warranted voluntarily he would have been barred from all right of action for ever.

Malm. We cannot deny that he entered by succession upon the death of John his father. Wherefore, Sir, abate this writ.

STAUNTON J. The Court adjudges that you take nothing by your writ etc.

Malmerthorpe acquiesced in the writ being abated by consent, as he thought it would be better to sue out a new and better writ than that the matter at issue should be delayed till the tenants came of age, as would have happened if the writ had been abated against his will.

Stonore dit hors de plee qil poit estre ensemble qe le tenant entra par Richard com le bref supposa & qil entra apres la mort Jon son piere par successioun.

[1]*Westcote* sil fust entre apres la mort Jon son piere par successioun[1] & ust aliene & repris estat &c uncore avereit[2] il son age &c.

[3]ANON. *v.* ANON.

[4]I.

Cui in vita.

Une femme porta le *cui in vita* vers Jon[5] & demanda certeins tenementz et dist en[6] les quex il ne avoit entre si noun par [7]Richard de C. jadys[7] son baroun a qi ele ne poeit contredire &c. Jon[5] vocha a garantir par eyde &c un Willem Richard & Adam fitz & heirs [8]Richard baron la femme &c[8] qi vyndrent &c[9] dount lun des iij. [10]freres fust[10] denz age.

Laufer [11]pur le demandant[11] Sire nous prioms seisine de terre del entier qar [12]Syre vous veyez bien coment[12] les iij. sount vochez & lun est denz age & la garantie est [13]une &c[13] & estatut veut qe femme ne soit mie delaye [14]de son droit[14] par le nounage le heir par qey nous prioms seisine [15]del entier[16] meintenaunt.[17]

Cant. ceo serroit duresse davoir seisine del entier qar les ij. sount en court & [18]de pleyn age[18] prest a pleder.

Spigurnel vous priez seisine del entier par le nounage lun[19] qe serroit duresse a les ij. &c qar peut estre qil ount reles & quitecleime de la femme par quei &c. [20]E jeo vey qe si la femme soit delaye de son droit par le nounage lun [21]qant a ore[21] ele serroit delaye a touz jours qar quant cesti serroit dage [22]un autre pout devier son heir[22] denz age & sic in infinitum par qey &c.

Laufer Syre il covent qe nous eoms seisine del entier qar les iij. sount vochez joyntment com un heir & lun qest denz age ne peut ne ne doit garantir[23] ne les ij. ne poent garantir saunz le terce [24]en nule manere[25] qar[26] ceo serreit a severer la garantie qe ne peut estre severe[27] & la femme

[1]–[1] ζ *omits.* [2] devereit ζ. [3] Reported by γ, ϵ, ζ, η, λ. [4] Text of (I) from γ collated with ϵ, ζ, λ. [5] Thomas ϵ. [5]–[6] ζ *omits.* [7]–[7] ζ *omits.* [8]–[8] le baron ζ. [9] en court ζ. [10]–[10] *from* ϵ ; furent γ. [11]–[11] ζ, λ *omit.* [12]–[12] *from* ϵ. [13]–[13] en le dreit λ. [14]–[14] ζ *omits.* [15]–[16] λ *omits.* [15]–[17] de terre ζ. [18]–[18] en pleine vie λ. [19] ϵ, ζ, λ *add* la ou les ij. sunt de pleyn age prest en court a pleder. [20] λ *adds* et e contra. [21]–[21] et ore il ensueroit qe ϵ, λ ; par la ou les ij. sunt de pleine age mes il ensueroit ζ. [22]–[22] et donqes deviereit un autre et son fiz sereit ζ. [23] ζ *adds* durant son nounage. [24]–[25] λ *omits.* [24]–[26] qar sil feisent ζ. [27] *from* λ ; &c. γ.

Stonore, after the case was settled, said that it might very well be both that the tenant entered by Richard, as the writ alleged, and that he also entered by succession upon the death of John his father.

Westcote. If he had entered upon the death of John his father by succession, and had alienated and afterwards recovered possession, he would be entitled to have his age allowed.

ANON. *v.* ANON.

I.

A woman brought the *cui in vita* against John, and demanded certain tenements, into which, she said, he had no entry save by Richard of C. that was late her husband, whom she could not contradict. John vouched to warrant by aid etc. William, Richard and Adam that were sons and heirs of Richard, the woman's husband etc. These came etc.; and one of the three brothers was under age. *Cui in vita.*

Laufer, for the demandant: Sir, we pray seisin of the entirety of the land; for, Sir, you see that three have been vouched, one of whom is under age, while the warranty is not partible. The Statute[1] lays it down that a woman shall not suffer delay of her right by reason of the infancy of the heir. Wherefore we pray immediate seisin of the entirety.

Cambridge. It would be a hardship if she were to receive seisin of the entirety, for two [of the heirs] are in Court, and are of full age and ready to plead.

Spigurnel J. You pray seisin of the entirety on the ground of the infancy of one [of three heirs], which would, if granted, constitute a hardship for the two others etc. for it may be that they have a release and quitclaim from the wife. Consequently etc. and, on the other hand, I recognize that if the wife is to suffer delay in coming into her right through the infancy of one of the heirs she may be kept out of it for ever, for when this infant heir attains full age, another of the heirs might die, and leave an infant as his heir, and so on *ad infinitum*; wherefore etc.

Laufer. Sir, it is reasonable that we should have seisin of the entirety for the three are vouched jointly as one heir. One of the three is under age and neither can nor ought to warrant; and without the third the others can give no manner of warranty, for their doing so would be to sever the warranty, which is a thing inseverable; and the woman

[1] *Sc.* Statute of Westminster II, cap. xl.

ad statut pur ly qe veut qe femme ne soit delaye [1]de son droit par le nounage[1] &c & commune ley veut qe qaunt un des [2]parceners ou des coheirs soit[2] denz age tut soient les autres dage qe la parole demorra [3]saunz jour[3] taunt qe &c par qey [4]par cestes resons nous prioms seisine del entier.[4]

[5]Spigurnel atendez voz jugementz. Postea[5]

Spigurnel pur ceo qe les iij. sount vochez[6] dount lun est denz age par qey il covent qe la parole demorge tanqe a son age & statut veut qe la femme ne soit delaie de son droit &c par quei agarde la curt qe la femme recovere vers le tenant & le tenant attende daver sa garantie taunt qe al age [7]le vochez solom statut[7] &c.

[8]II.

Une femme porta son *Cui in vita* en les queus le tenant nauoit entre etc. Le tenant vocha a garantir iiij. parceners com filz et heir le baron lez iij. de plein age et la quarte deinz age.

Lauff. Vous auez voche a garantir iiij. com un heir dont le un est voche com deinz age donc nous sumes en cas de statut de auoir seisine de terre jugement et prioms seisine de lenter.

Westcote. Nous avoms voche iiij. a garrantir dont lez iij. sont de plein age et statut parle la ou le heir le baron est voche deinz age qe adonqes la femme recouera meintenant seisine etc. et de pus qe les iiij. sont com un heir et lez iij. de plein age et issint hors de cas de statut. Jugement et prioms qe la parole demourge ieqes al age lenfant etc.

Spig. Si la parole demourast tanqe al age la quarte parcener un de qatre poit deuier son heir deinz age et issi par cas la femme barre a tous iours. Et estre ceo a la comune ley la parole ust targe et la femme targe de son droit tant qe al age etc. pur quele duresce ouster fut statut ordine qe suppose qe le tenant qe dust vocher et estre garanti[9] ne deit pas mesconustre qil ad achacer altri dreit donc de pus qe de comune

[1]–[1] ζ *omits.* [2]–[2] heirs est ζ. [3]–[3] ζ *omits.* [4]–[4] &c ζ. [5]–[5] ζ *omits.* [6] λ *adds* com un heir. [7]–[7] ζ *omits.* [8] Text of (II) from η. [9] The text becomes somewhat confused here.

further relies upon the Statute which lays it down that a wife shall not be delayed in her right by reason of the infancy etc.; and according to the common law, when one of several parceners or coheirs is under age, the action shall, notwithstanding the fact that the others are of full age, stand over, without day assigned, until etc. For these reasons we pray seisin of the entirety.

Spigurnel J. Await your judgments.

Spigurnel J. at a later time: Seeing that one of the three vouchers is under age the action must stand over until he attain his full age; but since the Statute lays it down that the wife shall not suffer delay of her right etc., the Court gives judgment that the woman recover as against the tenant, and that the tenant shall await the full age of all the vouchees for his warranty, according to the Statute etc.

II.

A woman brought her *cui in vita* [and claimed certain tenements] in the which [she said] the tenant had no entry etc. The tenant vouched to warranty four parceners as sons and joint heirs of the husband, three of these being of full age, and the fourth being under age.

Laufer. You have vouched to warranty four sons as constituting one heir. One of these vouchees is under age. Consequently the provision of the Statute relating to the seisin of land applies. Judgment; and we pray seisin of the entirety.

Westcote. We have vouched four to warranty, of whom three are of full age. The Statute enacts that where the heir of the husband is vouched, being under age, the wife shall immediately recover her seisin etc. But, since the four vouchees constitute but a single heir, and three of them are of full age, we are outside the Statute. Judgment; and we pray that the action stand over till the infant attains his full age, etc.

Spigurnel J. If the matter stand over until the fourth parcener attain full age, one of the four may die in the meantime leaving an infant as his heir, and so it might happen that the woman would be barred all her life. And, further, at common law the hearing would have stood over and the wife would have been kept out of her right until etc.; but to remedy this hardship a Statute was enacted which prevents a tenant that can vouch and be warranted from standing in the way of others' rights. Since, then, by the common law, the hearing

ley la parole targereit tant avant par le nounage le un com par nounage de tous et issint il semble qil ad en ceo cas de statut en tant com la garantie est une qe ne put par parcele estre plede et qe la feme avera seisine de terre de lenter etc.

[1]ANON. *v.* ANON.

Cui in vita. Une Jone porta son *cui in vita* vers Agnes & demanda certeins tenementz [2]& dit[2] en les qeux ele ne avoit entre si noun par J. son baron qi ceus tenementz lessa [3]al avantdit Agnes[3] & a Richard son baron a qi [2]ele ne pout[2] &c.

Laufer. [4]Agnes & son baron[4] purchacerent ces tenementz a eux & as heirs le baron issint qele nad qe fraunktenement & prie eide de les heirs son baron qi ci sount & denz age & prient lour age.

Spigurnel veez si vous devez aver vostre age en ceo cas.

Laufer nous ne sumes nient en cas de statut qar si le baroun ust soul purchace & ust devye son heir denz age & ust este voche il ust ew son age par qey &c.

Ass. sil neient lour age la femme recovera de plus haut &c del droit ceus qi ne poent rien pleder & qaunt il serrount dage ils serrount barre par le recoverir de plus haut & issint saunz recoverir [5]par quey &c.[6]

Pendet.[7]

[8]ANON. *v.* PESIGDENNE.

Cui in vita. Aubrey qi fust la femme Simond de C. porta son *cui in vita* vers Willem de Pesigdenne[9] & Jone sa femme & demanda j. mes & j. acre de terre &c en les qeux il ne avoient entre si noun par Richard de Pedryntone[10] a qi Simond jadys son baron ceus lessa a qi &c.

Cant [11]defend & dit [11]Willem & Jone sa femme com assignez Richard de Pedrintone vouchent [12]a garantir par eyde de ceste curt[12] un T. de B. qest dage & Richard & Jon ses freres qi sount denz age.

Laufer mesme ceus qil ad vouche sount les heirs nostre baroun dount les ij. sount denz age & prioms seisine par statut.

[1] Reported by γ and ϵ. Text from γ collated with ϵ. [2–2] ϵ *omits.* [3–3] a ly ϵ. [4–4] A. vous dit qe son baron et ly ϵ. [5–6] *from* ϵ. [7] ϵ *omits.* [8] Reported by γ, δ, ϵ, λ. Text from γ collated with δ, ϵ, λ. [9] P. δ; Pessyngdene ϵ; Pisindone λ. [10] *from* ϵ; Ped. γ; K. δ. [11–11] Syre ϵ. [12–12] *from* ϵ; &c. γ.

would be as effectually stayed by the nonage of one as by the nonage of all, and as this is a case where the warranty is not severable, it seems to us that the Statute applies, and that the wife ought to have seisin of her whole demand etc.

ANON. *v.* ANON.

Joan brought her *cui in vita* against Agnes and demanded certain tenements into which, she said, Agnes had no entry except by J. that was Joan's husband, who had leased those tenements to the said Agnes, and to Richard her husband, whom she could not etc. *Cui in vita.*

Laufer. Agnes and her husband purchased these tenements to themselves and the heirs of the husband, so that she has only a freehold, and prays aid of her husband's heirs, who are here, and are under age and pray their age.

Spigurnel J. I should like to hear you on the question of your being entitled to your age in this case.

Laufer. We do not come under the Statute.[1] If the husband had been sole purchaser and had died during the infancy of his heir, and this latter had been vouched, he would have had his age ; wherefore etc.

Assheley. If their age be not allowed the woman will recover an absolute right, since the children cannot plead ; and when they attain full age they will be barred by her absolute recovery, and so will lose their recovery. Wherefore etc.

The matter stands over for decision.

ANON. *v.* PESSINGDEN.

Aubrey that was wife of Simon of C. brought her *cui in vita* against William of Pessingdenne and Joan his wife, and demanded a messuage and one acre of land etc. into which, she said, they had no entry save by Richard of Pedryntone, to whom Simon that was formerly her husband leased them, whom she etc. *Cui in vita.*

Cambridge defends and says : William and Joan his wife, as assignees of Richard of Pedrintone vouch to warranty, by the aid of this Court, one T. of B., who is of full age, and Richard and John, his brothers, who are under age.

Laufer. These same whom he has vouched are the heirs of our husband ; and two of them be under age ; and we pray seisin under the Statute.[1]

[1] *Sc.* Statute of Westminster II, cap. xl.

Cant nous ne sumes mie en cas de statut qar nous sumes assigne Willem &c a qi vostre baron aliena & ici[1] sumes autre persone qe celi a qi vostre baron aliena par qey il covent qe vous atendez lage del vouchez.

Hervi a meyns nous veoms qe vous vochez les heirs son baron [2]tut soiez vous assigne[2] & en tiel cas statut oevere pur la femme.

Cant si nous usoms vouche [2]le heir[2] nostre feffor & il ust este denz age la femme ust attendu son age.

Spigurnel [3]oyl mes la serriez vous a la commune lei.[3]

Cant statut parle qant le baron aliene le droit sa femme &c. & son heir soit voche & soit denz age qe la femme ne soit delaye par le nounage &c mes Richard nostre feffour en eiaunt regard a nous aliena son droit demene & ne mie le droit sa femme qar il les purchacea a lui & a ses heirs par qey &c.

Hervi pur quey ne vochez [4]les heirs[4] vostre feffour.

Cant[5] il nount rien par qey &c.

Laufer [6]pria tutzjours[6] seisine[7] ut supra.[8]

Spigurnel tut ne fustes vous acatour del droit la femme inmediate vous fustez acatour[9] mediat qar ne peut estre dedit qe ceo ne fust le droit la femme & vous avez vouche les heirs le baron [10]par qey[10] asez estes en cas de statut.

Laufer. Mes[11] Sire sil ust voche son feffour et il ust entre en la garantie et ust vouche outre les heirs nostre baron [12]qe il voche ore[12] qi sount denz age nous nusoms mie este delaye par le nounage [13]&c dont nous demandons[13] jugement si par mi le voucher cely qad tessaili son feffour [14]e qy par ley ne peot estre de mellur condicion qe son feffour[14] &c. devoms estre targe de nostre seisine &c.

Cant nous vochoms les heirs Simond par vertue del fet nostre feffour & nient par le fet Simond par qey nous ne sumes mie en cas de statut.

Laufer mes qaunt vous vouchez com assigne les heirs Simond vous metez en cas de statut qar vous vouchez com assigne & vous ne poez estre de meilour condicioun &c ut supra.

[1] ensi δ; issint λ. [2–2] δ *omits*. [3–3] Nanyl δ, λ. [4–4] le heir δ. [5] qar δ (continuing as if by Hervi.) [6–6] from ϵ. [7] δ *adds* de terre. [8] δ and λ stop here. [9] *from* ϵ. [10–10] dont ϵ. [11] *from* ϵ. [12–12] *from* ϵ. [13–13] *from* ϵ. [14–14] *from* ϵ.

Cambridge. This is not a case where the Statute applies, for we are the assignees of William etc. to whom your husband alienated. We who are here are not the person to whom your husband alienated, and so you must await the age of the vouchees.

STAUNTON J. At any rate we see that, though you be but assignees, you are vouching the heirs of the husband ; and in such circumstances the Statute favours the wife's case.

Cambridge. If we had vouched the heir of our feoffor and he had been under age, the wife would have had to await his age.

SPIGURNEL J. Yes, but in that case you would have been under the common law.

Cambridge. The Statute says that when the husband alienates the right of his wife etc., and his heir is vouched and is under age, the wife is not to be delayed by the latter's infancy etc. Now Richard, our feoffor, acting out of consideration to us, alienated to us what was of his own right, and not of his wife's right, for he purchased the land to himself and his heirs ; wherefore etc.

STAUNTON J. Why don't you vouch the heirs of your feoffor ?

Cambridge. They have nothing by which etc.

Laufer again asked for seisin as above.

SPIGURNEL J. Though you were not the immediate purchaser of the wife's right, you were the mediate purchaser of it ; for it cannot be denied that the wife's right was alienated [by Simon to Richard], and you have vouched Simon's heirs. Consequently you are in the position contemplated by the Statute.

Laufer. But, Sir, if William had vouched his feoffor, and the feoffor had made appearance and vouched over the heirs of our husband, whom William now vouches and who are under age, we should not have been delayed by their infancy etc. Wherefore we now ask for judgment as to whether the omission to vouch his feoffor, by one who can be in no better position than his feoffor, does not entitle us to have our seisin.

Cambridge. We have vouched Simon's heirs by virtue of our feoffor's deed, and not by virtue of Simon's, and so we do not come under the Statute.

Laufer. But when, as assignee, you vouch Simon's heirs, you bring yourself within the Statute, for you vouch as assignee, and you cannot have a better position etc.—*as above.*

[1]RUSSEL *v.* FARNEBERGE.

Cui in vita. [2]ubi allegatio de diverso ventre.[2]

Johannes Russel et Cristina uxor ejus Johannes filius Johannis Farneberge & Alicia uxor ejus Agnes filia Simonis Dyen[3] & Thomas le Walker & Emma uxor ejus alias coram Willelmo de Berford & sociis suis justiciariis domini regis de Banco pecierunt versus Willelmum de Lunge[4] & Rogerum Dyen seniorem xi. acras bosci[5] cum pertinentiis [6]in eadem villa[6] ut jus & hereditatem ipsarum Christiane Alicie Agnetis & Emme & in quibus iidem Willelmus & Rogerus non habuerunt ingressum nisi per Ricardum filium Willelmi le Lunge quondam virum Pauline filie Simonis Dyen sororem predictarum Christine Alicie Agnetis & Emme cujus heredes ipse sunt qui illas eis dimisit cui ipsa Paulina in vita sua contradicere non potuit & Willelmus & Rogerus per attornatos suos tunc venerunt & defenderunt jus suum & dixerunt quod predicti Johannes Christina & omnes alii nichil juris clamare potuerunt in predictis tenementis de seisina ipsius Pauline &c. [7]Dixerunt enim quod predicta tenementa fuerunt jus predicti Simonis Dyen patris ipsius Pauline &c[7] qui Simon desponsavit quamdam Aliciam primam uxorem suam de qua procreavit predictas Christinam Aliciam Agnetem & Emmam &c. & post mortem ipsius Alicie prime uxoris sue &c desponsavit quamdam Elenam secundam uxorem suam de qua procreavit quemdam Johannem filium suum[8] &c. & predictam Paulinam de cujus seisina &c. Et dixerunt quod post mortem predicti Simonis qui inde obiit seisitus in dominico suo ut de feodo &c successit eidem predictus Johannes ut filius & heres & inde obiit seisitus sine herede de se &c post cujus mortem predicta Paulina soror &c. de sanguine integro intravit ut heres propinquior in predictis tenementis de eodem patre & eadem matre. Et pecierunt judicium si predicte Christina Alicia Agnes & Emma sorores predicte Pauline ex parte patris & alio ventre progenite [9]que non sunt de sanguine integro[9] aliquid clamare potuerunt in tenementis predictis in hoc casu &c & Johannes Christina & alie bene cognoverunt quod ipse Christina & alie sunt sorores predicte Pauline de cujus seisina &c de diverso ventre sed dixerunt quod ex quo ipse sunt filie predicti Simonis propinquiores sanguine Pauline sorori &c excludi non deberent in hoc casu ad petendum predicta tenementa de seisina sororis sue predicte & &c. & pecierunt judicium &c. [10]Dies datus est eis &c.[11]

[1] Reported by γ and ϵ. Text from γ collated with ϵ and E.R. [2–2] from ϵ. [3] Dyn E.R. [4] ϵ *adds* de la seles Beu. [5] terre ϵ. [6–6] &c. ϵ. The messuage was 'in La Sele,' E.R. [7–7] *from* E.R. γ and ϵ *omit*. [8] Simonis ϵ; E.R. *omits*. [9–9] ϵ *omits*. [10–11] *from* ϵ. [11] A long space was left blank in the E.R. for a continuation of the record, and it has remained blank.

RUSSELL *v.* FARNBOROUGH.

Cui in vita where the right of the half blood is questioned.

John Russell and Christina his wife, John the son of John Farnborough and Alice his wife, Agnes the daughter of Simon Dyen, and Thomas Walker and Emma his wife, at another time, before William Bereford and his companions, Justices of the Bench of our lord the King, claimed from William of Lyminge and Roger Dyen the elder eleven acres of woodland, with the appurtenances thereof, situate in the said town [of Lyminge], as the right and inheritance of them the said Christina, Alice, Agnes and Emma ; into which [they said] those same William and Roger had no entry except by Richard the son of William of Lyminge that was formerly husband of Paulina, the daughter of Simon Dyen and sister of the aforesaid Christina, Alice, Agnes and Emma, who are her heirs ; the said Richard, whom the said Paulina could not contradict during his lifetime, having demised the said tenements to them. William and Roger came, by their attorneys, and defended their right. They said that John, Christina and all the others aforesaid could claim no right in the said tenements from the seisin of the said Paulina etc. And they further said that the aforesaid tenements were of the right of the aforesaid Simon Dyen, the father of the aforesaid Paulina etc., and that that same Simon married as his first wife one Alice, of whom he begat the aforesaid Christina, Alice, Agnes and Emma etc. ; and that after the death of this his first wife, Alice, etc., he married, as his second wife, one Ellen, of whom he begat one John, his son etc. and the aforesaid Paulina, of whose seisin etc. And they said that after the death of the said Simon, who died seised of the said tenements in his own demesne as of right etc., the aforesaid John as his son and heir succeeded him. And John died seised thereof, leaving no heir of his body etc. ; and upon John's death the aforesaid Paulina, being sister of the whole blood, of the same father and the same mother, entered the said tenements as the nearest heir. And they asked for judgment whether the aforesaid Christina, Alice, Agnes and Emma, that were sisters of the aforesaid Paulina on the father's side only, being begotten of another mother, and were not of the whole blood, could, in these circumstances, claim aught in the aforesaid tenements etc. And John, Christina and the others allowed that the same Christina and the others were sisters by a different mother of the aforesaid Paulina, of whose seisin etc. ; but, seeing that they are daughters of the aforesaid Simon, they say that they are nearer in blood to Paulina their sister etc. and ought not, in these circumstances, to be precluded from claiming the aforesaid tenements of the seisin of their sister aforesaid and etc., and they asked for judgment etc. A day was given them etc.

[1]ASPAILE *v.* ASPAILE.

[2]I.

Cui in vita ou la femme prist soun title de doun fet par deux et la seisine lun fut traverse et estut laverrement.

Juliane qe fut la femme Rogger Aspaile[3] porta soun *cui in vita* vers Robert fitz Robert Aspayle[3] et demaunda un mees et dit qe ceo est soun dreit du doun Richard de Broke et Thomas soun frere qe ceux dona a soun baron et a lui et a lour heirs en le quel il nad entre si noun par le dit Rogger jadis &c a qi ele en sa vie ne pout contredire etc.

Pass. La ou ele print soun title du doun Richard et Thomas nous vous dioms qe eux navoient unqes rien du doun Richard. Prest &c.

Ingham. A ceo ne devez avener kar nous avoms pris nostre title du doun Richard et Thomas et si vous vollez nostre title destrure il covient qe nous seioms pleinement a trauvers issi qe vostre response se lie auxi bien de Thomas com de Richard par quei responez si T. lessa ou noun.

Stonore. Si homme porte bref dentre sur la novele diseisine e qe counte qe le tenaunt nad entre si noun par J. et W. qe a tort &c ou le tenaunt puisse averer qil nentra mie par Johan le bref se abbatera. Auxi par de cea.

Stant. Si homme porte bref vers deus com vers joint tenauntz et lun neit riens en les tenemenz [4]si lautre soit tenaunt dil enter[4] le bref est assez bon. Auxi par de cea.

Stonore. Il nest paas semblable qe si le bref soit porte vers deux en comune lun face defaute lautre serra receu a dire qil est tenaunt dil enter et defendra lenter mes en ceo cas sil puisse prover qil nad rien du lees Richard ceo est daventir lour title enterement par quei il nad mester a ceo respoundre.

Malm. Si il fut oste de cesti respounse il serreit ouste en cas de soun voucher qe serreit graunt [5]dures e[5] meschef.

Ingh. Qe nous sumes[6] seisi du doun Richard et Thomas. Prest &c.

Pass. Qil navoit rien du doun Richard. Prest &c. [7]Et sic ad patriam.[7]

[1] Reported by *a*, *aa*, *β*, *γγ*, *ζ* and λ. [2] Text of (I) from *a* collated with *β* and λ. The note in *β* is :—

Cui in vita ou le demaundant dist qe les tenemenz furent donez a son baroun e a ly e a lour heirs par Th. e R. ou le tenaunt dist qe eus navoynt unques rien du doun R. e demanda jugement etc. e furent a tiel issu le demaundant dist que de doun lun e lautre e le tenant le revers. The note in *aa* is the same, with slight variations of spelling.

[3] Haspaile *β*. [4]–[4] λ *omits*. [5]–[5] *from β*. [6] fumes λ. [7]–[7] alii in contrarium λ.

ASPAILE *v.* ASPAILE.

I.

Cui in vita where the wife bases her title on a gift made by two persons, and the seisin of one of these is traversed; but the averment is upheld.

Juliana that was wife of Roger Aspaile brought her *cui in vita* against Robert the son of Robert Aspaile and demanded a messuage, and said that it was her right by the gift of Richard Brook and Thomas his brother, who gave the said messuage to her husband and herself and their heirs, into which she says that the said Robert has no entry save through the said Roger that was formerly etc. whom she in his lifetime could not contradict etc.

Passeley. Whereas she founds her title upon the gift of Richard and Thomas, we tell you that [Juliana and her husband] never took aught by the gift of Richard. Ready etc.

Ingham. That is a plea which ought not to be received; for we found our title upon a gift from Richard and Thomas jointly; and, if you want to prove that our title is bad, you must traverse our whole counting so that your answer concern itself with Thomas as well as with Richard. Therefore you must answer whether Thomas leased or did not.

Stonore. If a man bring a writ of entry upon novel disseisin, and count that the tenant had no entry except by J. and W. who wrongfully etc., and the tenant is able to aver that he did not enter by John, then, in such a case, the writ will abate. And so here.

Staunton J. If a man bring a writ against two persons as against joint-tenants, and one of these two have nothing in the tenements, then, if the other be tenant of the entirety, the writ is good. And so in this case.

Stonore. The cases are not similar; for if the writ be brought against two persons jointly, one of whom makes default, the other will be received to say that he is tenant of the whole, and he will defend the whole. But in this case if we can show that they took nothing from any lease from Richard we break down their title entirely; and so we need plead naught else.

Malmerthorpe. If he is to be driven from this plea he will be deprived of his voucher to warrant, which would be a great hardship and wrong.

Ingham. We are seised by the gift of Richard and Thomas. Ready etc.

Passeley. They never had aught by the gift of Richard. Ready etc. And so to a jury.

Note from the Eyre Roll.

The demandant's name, according to the Roll, was Juliana. There were two defendants, Robert and John his brother. Their plea, upon which issue was joined, was :—quod predictus Ricardus de Broke nunquam aliquid habuit in predictis tenementis ita quod ipse simul cum predicto Laurencio fratre ejus predictos Rogerum et Julianam inde feoffare potuit sicut predicta Juliana dicit.

[1]II.

Cui in vita.

Luce qi fut la femme Robert de Muswell[2] porta le cui in vita vers Robert le fitz Robert de Baspal[3] et prist son title de doun Robert Richard et Laurence.

Ingham par la ou vous clametz cel tenement de doun Robert Richard et Laurence Richard ne dona poynt prest etc. pur quei demandoms jugement du bref.

Stonore quoi responetz vous a Laurence et R.

Malm. assetz lor suffit sil pussent averer qe un ne dona poynt qar autrement vous ly tondiretz son voucher.

Stonore de meilleur condicion ne serretz vous cy qe cy deuz [4]fusent joyntement enpledetz[4] qar tut deit lun qil nauoit rien en les tenementz pur taunt ne abatera il pas le breve nyent plus par de sa.

Spigurnel a la semblaunce qe vous faites nest pas semblaunce qar lun tenant purra respondre pur lentier mes qe lautre face defaute et sauer[5] la tenance en sa persone pur quei ceo nest mye al bref mes en ceo cas cest al bref et[6] suffit dauerer qe lun ne dona poynt qar en un bref dentre cest bon response a dire qe la ou vous dites qil nauoyt entre si noun par un tiel [7]& un tel a dire qil[7] ne entra poynt par un tiel.

Et apres les autres diseient qe Richard dona prest &c.

Et alii econtra etc.

[1] Text of (II) from γγ, collated with ζ. [2] from ζ ; M. γγ. [3] Haspal ζ. [4–4] joinfeffez ne fussent enpledez ζ. [5] sauuer ζ. [6] mes ζ. [7–7] *from* ζ ; γγ *has* qi.

Note from the Eyre Roll—*continued.*

The verdict was :—quod predicti Ricardus atte Brok et Laurencius seisiti fuerunt de predictis tenementis cum pertinenciis et quod predicti Ricardus et Laurencius dederunt tenementa illa cum pertinenciis predicte Juliane et predicto Rogero quondam viro ipsius Juliane et ipsos inde feoffaverunt sicut predicta Juliana dicit.

The judgment was :—quod predicta Juliana recuperet inde seisinam suam etc. et predicti Robertus et Johannes in misericordia, etc.[1]

II.

Lucy that was wife of Robert of Muswell brought the *cui in vita* against Robert the son of Robert of Baspal, and made title from the gift of Robert, Richard and Lawrence. *Cui in vita.*

Ingham. Whereas you claim this tenement by the gift of Robert, Richard and Lawrence, [we say that] Richard gave naught. Ready etc. And so we ask judgment of the writ.

Stonore. What do you say as to Lawrence and Robert ?

Malmerthorpe. It is quite sufficient for them if they can aver that one gave naught ; otherwise you would deprive them of their voucher.

Stonore. You cannot here be in a better condition than in a case where action is brought against two persons as joint-tenants, one of whom says he has nothing in the tenements. Such an answer will not abate the writ ; and so in this case.

Spigurnel J. The two cases which you say are similar are not really so, for one tenant may answer for the whole of the tenement and save the tenancy in his own sole person, though the other make default ; and the objection would not be fatal to the writ. But in this case it would be fatal, and it would be sufficient to aver that one of the two named gave naught ; for in a writ of entry it is a good answer to say that 'whereas you laid that the tenant had no entry save by such and such ones, we say that he did not enter by such an one.'

Afterwards the others said that Richard did give. Ready etc. Issue joined etc.

[1] *m.* 10.

[1]NOTA.

[2]I.

En un *cui in vita* statutum allegatum.

Et la ou une femme[3] porte *cui in vita* vers akun qe ne seit mye celi a qi le baron lessa ne son heir e il voche a garantie un enfaunt deins age la parole demurra taunt qe a lage lenfaunt, tut die statut[4] quod secta mulieris aut eius heredes non differantur propter minorem etatem heredis qui warantizare debet :—per Hervi.[5]

Set expectet emptor qui ignorare non debet quod alienum emit de warantia sua habenda :—ut patuit inter Adam de la Forde petentem &c. et Simonem atte Oke tenentem in itinere Kancie.

[6]II.

Sur cui in vita.

[7]Un bref dentre fut porte et dit en le quel le tenant nauoit entre si noun pus le lees qun Johan baroun Isabel de ceo en fist etc. a qi ele en sa vie contredire ne pout.[8] Le tenant voucha a garrantie un enfant deinz age.

Stonore. Le noun age en ceo cas ne nous deit[9] targer.

Ingham. Si fra qe celly qe vouche nest my emptor pur quei il couent attendre son age qar vous nestes my en cas destate.

Stantone. Vous nestes my en cas de statut qar celly qe vouche [10]nest pas emptor ne le vouchez heir venditor[10] pur quei attendez son age etc.

[11]WYLMENTONE *v.* BROCHELLE.

[12]I.

Vocacio ad warantizandum ubi tractatur de peticione admitti &c.

De Ingressu.

Maude qi fust la femme Johan de Wilmingtone[13] porta bref vers Willem de Brokhulle & Margaret sa femme & demanda certeinz

[1] Note from *a*, *aa*, *β*, *δ*, *ζ*, λ. [2] Text of (I) from *β* collated with *a*, *aa*, λ. *a* omits headline. [3] λ *adds* ou son heir. [4] *Sc.* Westminster II, c. 40. [5] λ *adds* pur ceo qe statut ne fut ordine a oster nul de sa garauntie forsqe la purchacur ou son heir et pur ceo dit statut. [6] Text of (II) from *δ* collated with *ζ*. [7–8] En un bref de cui in vita in le post &c. *ζ*. [9] *ζ adds* grever ne. [10–10] noun est emptor nec heres emptoris *ζ*. [11] Reported by *a*, *aa*, *β*, *γ*, *δ*, *ϵ*, *ζ*, *η*, λ. Names of parties from E.R. In reporting this case and the following one between the same parties, *a*, *a* and *β* report the following action first. *δ* makes but one report of the two cases. [12] Text of (I) from *γ* collated with *ϵ*, *ζ*, λ. Head-note from *ϵ*. [13] Wilyington λ ; Wylmentone E.R.

NOTE.

I.

The statute relied upon in a *cui in vita.*

Where a widow brings the *cui in vita* against one who is neither the lessee of her husband nor such lessee's heir, and the tenant vouches to warranty an infant under age, the trial of the action must stand over till the infant attain full age, notwithstanding that the Statute[1] lays down that the suit of a woman or her heirs shall not be delayed by reason of the infancy of an heir who should warrant: by STAUNTON J.

But a purchaser who ought to have known that he was purchasing what belonged to somebody else must wait for his warranty, as was laid down during the Eyre of Kent in *Adam Ford* (*Demandant*) v. *Simon Oke* (*Tenant*).[2]

II.

Note on a *cui in vita*

A writ of entry was brought wherein it was alleged that the tenant had no entry save by the lease which one John, the husband of Isabel, granted etc. whom she, during his life, could not contradict etc. The tenant vouched to warranty an infant under age.

Stonore. In these circumstances infancy ought not to delay us.

Ingham. Yes, it ought; for the voucher is not a purchaser, and so you must await the vouchee's age; for you do not come within the Statute.

STAUNTON J. You do not come within the Statute, for the voucher is not a purchaser, nor is the vouchee the vendor's heir. So you must await his age etc.

WELLINGTON *v.* BROCKWELL.

I.

Voucher to warranty: where a wife's right to be received to defend her right is discussed.

Entry.

Maud that was wife of John of Wellington brought a writ against William of Brockwell and Margaret his wife, and demanded certain

[1] *Sc.* Statute of Westminster II, cap. xl.

[2] Adam de la Ford sued Simon Attenoke for two acres of land. Simon vouched three persons to warranty, of whom one was under age and prayed his age. E.R. *m.* 33*d.*

tenementz.[1] W. & M. vouchent [2]a garantir[2] James de Bourne[3] qi vynt[4] & garant & vouche outre Willem de Brokhulle soul[5] le qel W. fist defaute par qey les tenementz furent en poynt [6]destre perduz [7]& vynt[7] M. sa femme avant[8] jugement rendu & [9]pria qe nule defaute &c qar ele[9] dit qe devant certeines justices [10]tiel an &c[10] se leva une fyn &c de mesme les tenementz [11]entre Willem de Brokhulle & M. sa femme &c & James de Bourne &c par qele fyn W. conust les tenementz estre le droit James com ceo qil avoit de son doun & pur cele reconisance James graunta & rendi mesme ceus tenementz[12] a W. & a M. sa femme a terme de lour ij. vyes & apres lour deces qe les tenementz remenisent a Thomas [13]lour fitz[13] [14]& as heirs de son corps engendrez[14] & pria qe nule defaute [15]qe son baron avoit fet[16] et pria destre[17] receue a defendre son droit [18]del fraunktenement.[18]

Stonore [19]resceu ne deyvez estre qar[19] vous & vostre baroun avez vouche James de Bourne[20] & estes garanti par qey vous ne poez rien perdre [21]qar tut perdiseez vous les tenementz &c[22] vous recoverez a la value [23]de James &c. [24]Jugement si vous deyvez estre resceu.[25]

Fris. Estatut veut qe nous seoms receue par la ou les tenementz sount en poynt de perdre[26] par defaute de nostre baroun mes ore [27]est cest bref porte vers nous & nostre baron & les tenementz sount en poynt &c[28] par[29] defaute [30]de nostre baron [31]e nous sumes venuz avant jugement &c[32] par qey [33]nous prioms estre resceu &c.[34]

[35]*Stonore* lestatut qe veut qe femme soit receue [36]&c parle[36] ou le baron est tenant del demene & fet defaute mes en ceo cas le baron fet defaute com celuy qest tenant par sa garantie soul ut patet supra par qey [37]vous ne devez en tel cas estre resceu.[38]

[1] λ *adds* &c. [2–2] *from* ϵ ; &c. γ. [3] Broun ζ. [4] ζ *adds* en court. [5] λ *omits.* [6–8] de perdre par quei lavant dit Margaret vient devant ζ. [7–7] survynt ϵ. [9–9] ζ *omits.* [10–10] ζ *omits.* [11–12] ζ *omits.* [13–13] fiz et heir William de Brochulle ζ. [14–14] λ *omits.* [15–16] *from* ϵ ; &c. γ. [16–17] la turnerent en prejudice qe ele ne fut ζ ; ne la tourne en prejudice qe ele ne puisse estre λ. [18–18] ζ *omits.* [19–19] *from* ϵ. [20] Bruone ζ. [21–26] ζ *omits.* [22] demandez λ. [23–25] pur quei &c. λ. [24–25] *from* ϵ. [27–34] sumes en le cas pur qei &c. λ. [28] de estre perduz ζ. [29] ζ *adds* sa. [30–34] jugement si nous ne devoms estre receu del hour qe nous sumes venuz avant jugement rendu ζ. [31–32] *from* ϵ. [33–34] *from* ϵ ; &c. γ. [35–38] *Stonore.* Le statut voet qe la femme seit ressu a defendre son dreit par la ou le baron et sa femme sunt enpledez et le baron com celi qest tenant del demene face defaute qe la femme seit ressu mes nostre cas est tel car le bref est porte vers Willem et Margaret les quez vouchent a garantir James de Bourne qe vint en court et garanti et voucha outre Willem de Brokehulle soul qe ore fet defaute noun pas com celi vers qi ceti bref est porte mes com celi qest somons a garantir pur qei vous estes en teu cas vers li com sil ut vouche un estranger mes sil ut vouche un estranger vous ne serret mie en cas destre ressu par sa defaute ne nient plus de cete part. λ. ζ reads almost identically the same. [36–36] par defaute de son baron &c. par la ϵ. [37–38] *from* ϵ ; &c. γ.

tenements. W. and M. vouched to warranty James of Bourne, who came and warranted and vouched over William Brockwell alone; which William made default, whereby the tenements were on the point of being lost. Thereupon, before judgment given, came M. his wife, and prayed that no default etc.; for, said she, before certain Justices, in such and such a year etc., a fine etc. was levied of these same tenements between William of Brockwell and M. his wife etc. and James of Bourne. By this fine W. acknowledged the tenements to be of the right of James as of the gift of himself W.; and in consideration of this acknowledgment James granted and surrendered these same tenements to W. and M. his wife for the term of their two lives; and after their decease the tenements were to remain to Thomas their son and to the heirs of his body begotten. And she prayed that her husband's default should not be to her prejudice, and sought to be received to defend her right to the freehold.

Stonore. You ought not to be received, for you and your husband vouched James of Bourne, and were warranted. Consequently you are in no danger of losing anything, for even if you should lose the freehold you will recover its value from James etc. Judgment whether you ought to be received.

Friskeney. The Statute[1] says we are to be received if the tenements are in danger of being lost through the default of our husband. Now this present writ is brought against us and our husband, and the tenements are endangered by the default of our husband; and we have appeared before judgment etc., and so we pray to be received etc.

Stonore. When the Statute says that the wife is to be received etc. it is referring to cases where the husband is tenant in demesne and makes default. But here we have a husband making default who is tenant by warranty only, as appears from what has been said; and, consequently, in such circumstances you ought not to be received.

[1] *Sc.* Statute of Westminster II, cap. iii.

SPIGURNEL coment qil soit vouche il[1] covient[2] qil soit [3]somonse agarde[3] & touz jours est il le baroun M. &[4] les tenementz sount en point [5]&c qe sount le droit M. par qey &c.[6]

[7]*Stonore* qaunt W. & M. voucherent James &c ceo fust un play &c mes qaunt James vocha outre W. soul il le vocha com un estraunge & la comencea un autre play a qel M. nest partie ne ne peut estre par qey en ceo play par la defaute W. ele ne peut estre fait partie nec per consequens receue &c.

HERVI. Qaunt qe ele ad fet si est le fet le baron & ele voit ore qe son droit est a perdre par qey avisez vous.[7]

Stonore soit receue [8]& ceo feust il chace.[8]

Malm. Margaret[9] tient ceus tenementz par la fyn avantdit ove son baron a terme de vye[10] & le fee taille[11] repose en la persone Thomas [12]lour fitz[13] saunz qi &c[14] & pria eide &c[15] le qel[16] est prest en court & se joynt de gree &c.

Note from the Eyre Roll.

William Brockwell does not appear. The Count was:—Margareta et Thomas dicunt quod alias in Curia domini Regis nunc apud Westmonasterium scilicet a die Sancti Martini quindecim dies anno regni sui tercio coram Willelmo de Bereford et sociis suis Justiciariis de Banco levavit quidam finis inter predictos Willelmum filium Willelmi de Brochelle et Margaretam uxorem ejus querentes et Jacobum filium Ricardi de Burne deforcientem de predictis tenementis cum pertinenciis per quem finem predictus Willelmus recognovit predicta tenementa cum pertinenciis esse jus ipsius Jacobi etc. Et pro hac etc. idem Jacobus concessit predictis Willelmo et Margarete predicta tenementa cum pertinenciis et illa eis reddidit in eadem Curia etc. habenda et tenenda eisdem Willelmo et Margarete tota vita ipsorum Willelmi et Margarete ita quod post mortem ipsorum Willelmi et Margarete predicta tenementa cum pertinenciis integre remanerent predicto Thome et heredibus de corpore ipsius Thome procreatis etc. Et proferunt partem predicte finis que hoc testatur etc. Unde predicta Margareta dicit quod defalta predicti Willelmi viri sui ei prejudicare non debet in hac parte et petit quod ipsa admittatur ad liberum tenementum suum defendendum etc. Et admittitur etc. Et Margareta dicit quod ipsa non potest predicta tenementa sine predicto Thoma in Judicium deducere etc. Et petit auxilium de ipso Thoma etc. Et idem Thomas presens jungit se predicte Margarete in respondendo etc. Et

[1] et λ. [2] coment λ. [3–3] a garantir ϵ, λ; somons de garantir ζ. [4] ϵ, ζ, λ *add* par sa defaute. [5–6] ζ *omits*. [7–7] ζ, λ *omit*. [8–8] et die ceo qel voudra ζ, λ. [9] el dit qel ζ; ele dit qe ele λ. [10] lor ij. vies ut supra ζ; lour ij. vies λ. [11] ζ *adds* et le droit. [12–13] le fiz W. et Marg. ζ. [13–14] λ *omits*. [15] de li λ. [16] ζ, λ *add* Thomas.

Spigurnel J. Although he has been vouched, a summons might properly be granted against him. He is still M.'s husband, and the tenements, which are of M.'s right, are on the point etc., wherefore etc.

Stonore. When W. and M. vouched James etc., that was one case; but when James vouched over William alone, he vouched him as a stranger, and initiated another case to which M. is not a party, nor can she be. Since the default of W. does not enable her to become a party to the plea, she is not, consequently, receivable etc.

Staunton J. Whatever she did must be taken as being the act of her husband, and she sees now that her right is in peril; therefore consider what course you will take.

Stonore. Let her be received; for to this was he driven.

Malmerthorpe. Margaret holds these tenements jointly with her husband for the term of their lives by the previously mentioned fine; and the fee tail reposes in the person of Thomas their son, without whom etc.; and he prayed aid etc. And Thomas is ready in court, and willingly agrees thereto.

Note from the Eyre Roll—*continued.*

predicta Matillda petit versus eos predicta tenementa cum pertinenciis ut jus suum de dono predicti Jacobi de Wilmyntone etc.

The Plea was:—Margareta et Thomas defendunt jus suum quando et bene defendunt quod predictus Jacobus de Wilmyntone nunquam dedit predictis Johanni de Wilmyntone quondam viro predicte Matillde et ipsi Matillde predicta tenementa cum pertinenciis sicut eadem Matillda dicit. Et de hoc ponunt se super patriam.

The Verdict was:—Quod predictus Jacobus Wylmyntone dedit predicta tenementa cum pertinenciis predictis Johanni de Wylmyntone quondam viro predicte Matillde et ipsi Matillde et ipsos inde feoffavit sicut predicta Matillda dicit.

The Judgment was:—Quod predicta Matillda recuperet inde seisinam suam etc. Et Margareta et Thomas in misericordia etc.[1]

[1] *m.* 50*d.*

[1]II.

Cui in vita porte devers mesmes les iij. le fitz ne clama riens le baroun et la femme voucherent *ut supra* le baroun fit defaute la femme pria destre resceu et fut resceu pur ceo quele ne fut mie garaunti en le dreit com en lautre cas.

Mesme cele Maude porta un autre *cui in vita* au tiel come avaunt vers mesmes ceux William Margerie et Thomas et demanda xxviij. acres de terre en la manere avauntdite.

William Margerie et Thomas vindrount et Thomas dist qil ne clama rien en le tenementz quant a ore William et Margerie voucheront a garantie James de Burne *ut supra* et James voucha William qe fit defaute apres defaute *ut supra* par quei Thomas[2] vint com avaunt et pria estre resceu etc. et Margerie vint et dit coment qe William fit defaute ele fut venu[3] etc. et pria etc.

Stonore. resceu ne deit[4] estre pur ceo qe ele est garaunti et par taunt ne peut ele mie perdre qe soun baroun est[5] vouche com estraunge en quel caas ele ne serreit paas resceu nient plus icy.

Spig. nest paas semblable cest caas a lautre kar [6]en lautre caas[7] ele est garaunti de[8] plus haut[9] qe ele ne prie estre resceu a defendre mes en ceo caas ele nest garaunti me de fraunc tenement.

Stonore. pur ceo qele est garauntz de fraunc tenement pur ceo ne deit ele estre resceu a defendre ceo dount ele est garaunti kar ele ne put perdre par entendement de lei.

Stantone. quel tenement[10] est pris en la main le roi par la defaute le baroun pardeu[11] la tenaunce la[12] femme est en point [13]de perdre etc.[14] dount ele est venuz a defendre sa tenaunce par quei covient qe ele soit resceu.

Stonore. soit resceu.

Malm. donqe vous dioms nous[15] qe la ou Maud porte cestui bref et demaunde certeinz tenemenz come soun dreit du doun un Robert fet a Johan soun baroun et a lui et qe Johan etc. lessa a qi etc. la vous dioms nous qe Johan soun baroun navoit unqe rienz en ceux tenemenz issi qil pueit[16] lees fere et ceo voloms averrer.

[1] Text of (II) from *a* collated with *β*. The note in *β* is :—
Cui in vita porte vers un homme et sa femme e lour fiz qe voucherent a garantie un Jamus qe vient en court e vocha le baroun soul qe fit defaute apres etc. la femme pria etc. e fut receu e tiel issu le plee qe le baron e la femme navoyent rien du doun celi. Cujus contrarium credo.

[2] *sic* in both texts, but seemingly a mistake for *Margerie.* [3] *β adds* avant. [4] *β adds* ele. [5] *β adds* qest. [6–7] *β omits.* [8] *β omits.* [9] *omitted by a; supplied from β.* [10] chose *β.* [11] *erased in a; left standing in β.* [12] sa *β.* [13–14] issi de etre perdu *β.* [15] *β omits.* [16] pout *β.*

II.

Cui in vita brought against the same three. The son claimed naught. The husband and the wife vouched *ut supra*. The husband made default. The wife prayed to be received, and was received, because she was not warranted in the right as in the previous case.

That same Maud brought another *cui in vita* upon similar grounds against the same William, Margery and Thomas, and demanded twenty-eight acres of land after the manner aforesaid.

William, Margery and Thomas came, and Thomas said that he claimed nothing at present in the tenements. William and Margery vouched to warranty James of Bourne, as above; and James vouched over William, who made default after default, as above. Whereupon Margery[1] came as before and prayed to be received etc. And Margery came and said that seeing that William had made default she had come forward etc., and she prayed etc.

Stonore. She ought not to be received, for she is warranted, and so she cannot be a loser, as her husband is vouched as a stranger. In similar circumstances it has been ruled that she cannot be received. No more can she here.

Spigurnel J. This case is not on all fours with the former one. In the former case she was warranted in a higher estate than that which she prays to be received here to defend. Here she is warranted only of a freehold.

Stonore. She is warranted of her freehold, and so she ought not to be received to defend that of which she is warranted, for she cannot lose according to the law.

Staunton J. This tenement has been taken into the King's hand by reason of the husband's default; and, *par Dieu*, the wife is so parlously near losing her tenancy that she has come here to defend it; and so there is good reason why she should be received.

Stonore. Let her be received.

Malmerthorpe. Now we tell you that whereas Maud brings this writ and demands certain tenements as being of her right by the gift of one Robert to John her husband and to herself, which John, whom she etc. leased etc., we say that John her husband never had anything in these tenements so that he could lease them, and we will aver that.

[1] See note 2 on the opposite page.

Stonore. a cest averrement ne devez avenir kar nous pernoms nostre actioun du lees un Robert a nostre baroun et a nous dount si vous volez trauverser nostre actioun si covendra etc. nous affermons nostre actioun et etre pleinement a trauvers qe Johan nostre baroun et nous navoms rienz etc.

Hervi. en bref dentre qe suppose lees homme peut aver deux issues come a dire qil ne lessa point a celui com le bref suppose ou a dire qil navoit unqes rien qil pout lees fere mes la ou homme trauvers le lees covient qil soit trauverse pleinement come le lees est supose mes le dreit la femme dount sa actioun la est ore donee si surde[1] du lees feet a soun baroun et a lui [2]et issi deit[3] estre trauverse.

Malm. donqe vous dioms nous qe Johan soun baroun et lui navoyent rien du doun Robert auxi com etc.

Et alii e contra. Ideo jurata. Qui dicunt qe Robert dona a Johan et a Maud etc. Ideo recuperet Maud etc.

[4]WILMINGTON *v.* BROKHULLE.

[5]I.

Cui in vita porte devers le baroun et la femme et lour fuitz qe voucherent a garaunt un J. qe vint en court et voucha le baroun soul le baroun fit defaute apres defaute sourvint le fiz et pria destre resceu etc. sourvint la femme et pria destre resceu a defendre soun dreit et moustra par fin coment ele avoit joint estate ovesqe soun baroun et le remeindre talie a soun fuitz et fut la resceite countreplede pur ceo qe par soun voucher demene ele fut garaunti de soun estat et ovesqe cel ele ne fut pas en cas de statut par quei ele ne fut pas resceu et pur ceo qele fut garaunti en le dreit et soun estat ne voleit qe fraunc tenement.

Maud qe fut la femme Johan de Wybegintone[6] porta soun *cui in vita* vers William de Burkulle[7] et Margerie sa femme et Thomas soun fiz et demaunda certeins tenemenz come soun dreit du doun un Robert qy enfeffa Johan soun baroun et lui etc. en les queux mesme ceux ne ount entre si par Paris noun a qi Johan soun baroun lessa a qi ele en sa vie contredire etc.

William Margerie et Thomas voucherent a garaunt un James de B.

[1] sourde β. [2–3] par qey deit il β. [4] Reported by α, $\alpha\alpha$, β, γ, δ, ϵ, ζ, η, θ and λ. [5] Text of (I) from α collated with β. The note in β is :—Cui in vita porte vers W. de B. e sa femme e T. lour fiz qe vocherent a garantie un Jamus qe vint en court e garantist e vocha outre le dit William soul qe ly vocha ensemble o T. e M. e W. fit defaute etc. la femme pria etc. e ne fut pas receu pour ceo qe ele navoyt qe franc tenement. The note in $\alpha\alpha$ is similar. [6] Wibingtone β. [7] Brikhule β.

Stonore. Such an averment ought not to be allowed. We base our right of action upon the lease which one Robert granted to our husband and to us; and if you want to deny our right of action you must traverse our allegations fully. We re-affirm our cause of action, and traverse specifically your allegation that John our husband and we have nothing etc.

Staunton J. In a writ of entry founded upon an alleged lease you may have one of two issues; for the tenant may plead either that the alleged lessor did not lease as alleged in the writ, or that he never had aught to lease. If the lease is to be traversed, it must be traversed fully, as it is set out [in the writ]. The wife's right, touching which the demandant's action is brought, depends upon the lease made to her husband and to Margery herself, and so you must traverse it.

Malmerthorpe. Then we tell you that John her husband and she had nothing by the gift of Robert as etc.

And thereupon was issue joined; and so let a jury come. And the jury finds that Robert gave to John and to Maud etc. Therefore Maud is to recover.

WELLINGTON *v.* BROCKWELL.

I.

Cui in vita brought against husband and wife and their son, who vouched to warranty one J., who came into court and vouched the husband alone. The husband made default after default. The son intervened and prayed to be received etc. The wife intervened and prayed to be received to defend her right; and she produced a fine showing that she had a joint estate with her husband, with remainder in tail to her son. Objection was taken to her being received upon the ground that by her own vouchee she was warranted in her estate; and, further than this, that she did not come within the Statute. And she was, in consequence, not received, because she was warranted in her right, and her estate was only a freehold.

Maud that was wife of John of Wellington brought her *cui in vita* against William of Brockwell and Margery his wife and Thomas his son, and demanded certain tenements as her right by the gift of one Robert, who enfeoffed John her husband and herself etc., into which tenements they had no entry save by one Peter to whom John her husband, whom she could not contradict in his life-time, had leased them etc.

William, Margery and Thomas vouched to warranty one James of B.,

qi vint en court et garauntist et voucha outre William de Brokchulle soul William fit defaute apres defaute par qi les tenemenz furent en point destre perdutz survynt [Margerie][1] sa femme avaunt jugement rendue et pria estre resceu a defendre soun droit et dit qe William navoit estat qe a terme de vie et qe la revercioun a lui appent et prie etc. estre resceu a defendre soun dreit.

Malm. coment qe William face defaute etc. vous avez cy Margerie sa femme qe aad estat a terme de sa vie en mesmes les tenemenz et prie estre resceu a defendre soun dreit.

Et mist avaunt fin qe tesmoigna qe William et Margerie avoient estat a terme de lour deus vies et qe apres lour deces remaindront a Thomas lour fitz et les heirs de soun corps engendrez la quele fin lue.

Stonore. resceu ne deit ele estre kar Statut est ordeine la ou le dreit la femme est en point de perdre par la defaute le baroun, mes ele ne pout ore perdre par sa defaute kar ele mesmes ove soun baroun est garaunti de soun estat saver per James de Bourne. Et demaundoms jugement si cel estat dount ele mesmes est garaunti une foitz en ceste court devie estre resceu a defendre etc.

Fr. Assez est ele en cas de Statut car si soun baroun perdisit en ceo cas par defaute ele perdreit sa tenaunce qi serreit duresce, desicom ele est pret a soun dreit defendre et pur cel meschief fut Statut ordeine.

Malm. ad idem. Si jugement soit fet sur la defaute le baroun covendra qe execucioun[2] soit fete sur la nature de jugement nomement qe le demaundant rescovere vers le tenaunt saver vers William M. et Thomas et eux vers James et Jamus vers William et ore[3] prove a fin qest de record qe M. aad estat a terme de sa vie et issi serreit execucioun fete des tenemenz qe sount du dreit Margerie ou[4] ele est prest en court &c. Jugement.

Pass. ad idem. Statut voet qe si le baroun defent feintement le plee la femme qe la femme soit resceu &c. et en ceo caas coment qe le bref soit porte vers eux treis qe vouchont *ut supra* ceo ne fut mie la fet la femme et puet estre qe le baroun eit vouche folement celui qe rien aad dount cele fole voucher peut estre dit un feint plee et ceo nest paas la coupe la femme car[5] tut eut ele quitecleime ou altre chose fet[6] par quey

[1] Thomas β. [2] excepcion β. [3] ceo β. [4] e β. [5] par qey β. [6] from β. A word of three letters, beginning with *f* or *s*, is here erased in α.

who came into court and warranted and vouched over William of Brockwell alone. William made default after default. By reason of which the tenements being in danger of being lost, Margaret, his wife, intervened before judgment given, and prayed to be received in defence of her right; saying that William had only a life estate, and that the reversion was hers; and she prayed to be received to defend her right.

Malmerthorpe. Though William has made default etc., you have here Margery his wife who has a life-estate in the same tenements, and she prays to be received in defence of her right.

And he proffered a fine which witnessed that William and Margery had an estate for the term of their two lives, and that, after their decease, the tenements were to remain to Thomas their son and the heirs of his body begotten. Which fine was read.

Stonore. She ought not to be received; for the Statute applies[1] to the case of a woman whose right is imperilled through the default of her husband. But in this case the wife cannot lose by reason of her husband's default, for she herself, with her husband, is warranted of her estate, to wit by James of Bourne. And we ask judgment whether she should be received to defend this estate of which she has already been warranted in this court, etc.

Friskeney. She is sufficiently within the Statute, for if her husband were to lose in this case by default, she would lose her tenancy, which would be a hardship, since she is prepared to defend her right. And it was to prevent a hardship of this kind that the Statute was enacted.

Malmerthorpe, ad idem. If judgment is going to turn upon the husband's default, then execution must be in accordance with the nature of the judgment. That is to say, the demandant will recover as against the tenants, to wit, as against William, Margery and Thomas; and these latter as against James, and James as against William. This is proved by the fine, which records that Margery has an estate for life; and so execution would be had of the tenements which are of Margery's right; and she is ready in court etc. judgment.

Passeley, ad idem. The Statute lays it down that, unless the husband effectually supports his wife's plea, the wife is to be received etc.; and though in this case the writ is brought against all three who vouched, as above, that voucher was not the act of the wife. And it may be that the husband foolishly vouched one who never had aught; and this foolish voucher may have been a mere sham plea, which is no fault of the wife's; and though she had quitclaimed or done aught else which might

[1] *Sc.* Statute of Westminster, II, cap. iii.

ele poet aver barre le demaundaunt ele ne pout paas aver use encountre le gree soun seignour donqe semble il[1] qe le baroun eit feintement defendu le plee par le mespleder par quei il covient qe la femme soit resceu.

Stonore. Statut parle la ou bref est porte vers le baroun &c. en taunt suppose le statut qe le baroun soit tenaunt mei en ceo caas le baroun nest paas tenaunt come baroun la femme kar il ove sa femme sount garauntiz et sount hors de court et cestui William est vouche com un estraunge par James de Bourne et qe eux avoient vouche et si James eut vouche un estraunge le quel feit defaute &c. ele ne serreit paas resceu &c. nent plus par de cea kar si ele fut ore resceu ele vouchereit James par la fin qest de record et James vouchereit William come avaunt et issi procez nient fini. Jugement.

Hervi. Une chose avez vous lesse qe mult eide a ceste matere qe quaunt William Margerie et Thomas furent garauntiz de James il furent garaunti en le dreit Thomas kar Thomas a ad fee talie par ceste fin et ore prie ele estre resceu [2]a defendre[3] un fraunc tenement et ceo semble inconvenient kar si ele fut ore resceu en tiele manere ou devendreit la garauntie Thomas qest en le dreit certie jeo ne la sai mie veer ne le plus sage en Engelterre.

Stonore si ele fut ore resceu a defendre soun fraunc tenement ceo serreit a soun desheriter[4] la ou ele est garaunti en le dreit.

Fr. la court est deceu en ceo caas kar le bref voet qe Thomas soit tenant et la fin qest de record prove qil nest paas tenaunt dount nous semble qe la garauntie en le dreit de lui qe nest paas tenaunt ne serra paas prejudiciel a la femme qele ne serra resceu.

Pass. Quel jugement qe se feit sur ceste defaute covendreit a force qe execucioun se feit du droit la femme kar la verite est tele qe William naad un plein pee de terre[5] ou ele nest iointe par quei covient qele soit resceu.

Hervi. gardez[6] votz jours a Lundy en mesme lestat qe vous estes a ore.

A quel jour William et Thomas fesoient defaute par quei Margerie pria estre resceu &c.

Pass. come avaunt etc.

[1] *β adds* bien. [2–3] *β omits.* [4] desheritaunce *β.* [5] dreit *β.* [6] agardez *β.*

have operated to bar the demandant, she could not have availed herself of it against her husband's will. It seems, then, that the husband's defence was a mere sham, and, consequently, that the wife should be received.

Stonore. The Statute contemplates a case where the writ is directed against the husband etc., inasmuch as it supposes that the husband is the tenant. But in this case the husband is not tenant *qua* the wife's husband, for both he and his wife are warranted and are out of court. This William is vouched as a stranger by James of Bourne, whom they themselves had vouched. If James had vouched an [actual] stranger who had made default etc., the woman would certainly not have been received. Neither ought she to be in this case ; for if she were to be received she would be at liberty to vouch James under the fine, which is of record, and then James might vouch William as before, and so they might go on for ever. Judgment.

Staunton J. There is one thing which you have not mentioned that is very helpful in this matter. When William, Margery and Thomas were warranted by James, they were warranted in Thomas's right, for it is Thomas who has the fee tail by the provisions of the fine ; and now the woman prays to be received to defend a freehold, which does not seem consistent. For, if she were now received for such a reason, what would become of Thomas's warranty which is in the right ? It would beat me, and would beat the wisest head in England, to find it again.

Stonore. If she be now received to defend her freehold it will be to the diminution of her estate, for she is [already] warranted in the right.

Friskeney. The Court has been misled in this case by the writ speaking of Thomas as tenant ; while the fine, which is of record, proves that he is not tenant. Consequently it seems to us that the warranty in the right of one who is not tenant will not be to the prejudice of the woman even if she be not received.

Passeley. Whatever judgment be given in respect of this default, needs must be that its execution will be to the injury of the woman's right. For the truth of the matter is that William has not a single foot of ground save jointly with his wife ; and therefore she ought to be received.

Staunton J. Keep your day on Monday, remaining in the same state as you are now.

Upon which day William and Thomas made default ; and thereupon Margery prayed to be received etc.

Passeley as before etc.

Hervi. vous navez rien qe vous eide destre resceu forsqe vous alleggez Statut mes Statut voet qe come le baroun soit enplede des tenemenz qe sount du droit sa femme et il face defaute ou voille rendre ou feintement defent le dreit sa femme &c. mes ore nest pas vostre baroun enplede ne ceo nest vostre dreit kar vous navez forsqe fraunc tenement dount vous ne poez dire qe vous ne seez en ceo cas de Statut et estre ceo vous estes garauntis et de meillour estat qe vous ne biez defendre tut fussez vous resceu.

Pass. Sires il nest paas novele chose qe la femme le vouche aad este resceu a defendre soun dreit par la defaute le baroun qe fut vouche et qe femme aad este receu a defendre soun fraunc tenement kar il[1] aad dreit de fraunc tenement par quei jeo doi[2] estre eide par Statut.

Hervi. autre chose lei ne overe paas pour vous en ceo cas.

Et pur ceo qe le counseil Margerie entendirent qe le jugement taillereit encountre eux ele ne vint paas pur prier estre resceu et pur ceo fut agarde qe Maude recoverist sa demaunde etc. vers eux e eux vers James et James vers William &c.

[3]II.

Vocacio ad warantizandum ubi uxor petit admitti &c.

De ingressu. [4]Maude qi fust la femme Jon de Wilmyngtone[5] porta bref[6] vers [7]Willem de Brokhulle[8] & Margaret sa femme [9]& Thomas lour fitz & demanda certeins tenementz W. M. & T.[10] voucherent &c[11] James de Bourne qi [12]vynt en court [13]et garanti[14] & voucha outre le dit [15]W. de Brokhulle[15] qi fist defaute &c [16]par qey les tenementz furent en point [17]&c vynt[18] Margaret[19] & dit qe[20] une fyn se leva[21] entre [22]W. de Brokhulle & M. sa femme &c[22] & James [23]de Bourne de mesme les tenementz [24]ou W.[25] conust les tenementz &c estre le droit James &c.[26] E pur cele reconisance James graunta & rendi mesme les tenementz a [27]W. & a M.[27] a terme de lour ii. vyes & apres lour deces qe les tenementz remeneisent a T. lour fitz [28]& as heirs de son corps engendrez &c & pria qe la defaute son baron &c[28] & pria destre receue a defendre son fraunktenement.

Stonore receu ne devez estre qar vous & [29]W. & Thomas[29] avez

[1] ele β. [2] demande β. [3] Text of (II) from γ collated with δ and ϵ. δ makes but one report of this and the previous case. [4–5] meyme cele Maud ϵ. [4–6] Un bref fut porte δ. [7–8] meymes cels Willem ϵ. [9–10] les queux δ. [11] δ *adds* a garrantir. [12–13] *from* ϵ. [13–14] δ *omits.* [15–15] baron soul δ. [16–19] Vint la femme devant jugement rendu δ. [17–18] de perdre. Survynt ϵ. [20] δ *adds* devant certeinz Justices. [21] δ *adds* de memes ceux tenemenz. [22–22] Johan (*sic*) baroun et ly dune part δ. [23–24] δ *omits.* [24–25] par quel fine son baron δ. [26] com ceo qe James auoit de son doun δ. [27–27] a meme cesti baron et a ly δ. [28–28] δ *omits.* [29–29] vostre baron δ.

STAUNTON J. Except alleging the Statute, you have said nothing to show that you ought to be received. Now the Statute contemplates a case where a husband, being impleaded in respect of tenements which are of his wife's right, makes default or is willing to surrender or makes but a sham defence of his wife's right etc. But in this present case your husband is not the person sued, nor is your right in question, for you have no more than a freehold; and you cannot argue that this brings you within the Statute. Further than this, you are warranted, and have a better estate than the one you could defend if you were received.

Passeley. Sirs, it is no new thing for the wife of a vouchee to be received to defend her right when her husband, having been vouched, has made default; or for her to be received to defend her freehold; and here the wife has a freehold. And so I ought to be aided by the Statute.

STAUNTON J. The Statute applies to a different set of facts. It does not assist you here.

And as Margery's counsel understood that judgment would be given against them, Margery did not come and ask to be received. And so judgment was given that Maud should recover her demand etc. against the tenants, and the tenants against James, and James against William etc.

II.

Voucher to warranty where the wife seeks to be received.

Maud that was wife of John of Wellington brought a writ against William of Brockwell and Margaret his wife and Thomas their son and demanded certain tenements. W., M. and T. vouched etc. James of Bourne, who came into Court and warranted and vouched over the said W. of Brockwell, who made default etc., wherefore the tenements were in danger of being lost etc. Margaret came and said that a fine had been levied between W. of Brockwell and M. his wife etc. and James of Bourne touching these same tenements, by which fine W. acknowledged the tenements etc. to be the right of James etc.; and in consideration of this acknowledgment James granted and rendered these same tenements to W. and M. for the term of their two lives, with remainder, after their death, to T. their son and the heirs of his body begotten etc.; and she prayed that her husband's default etc. and further prayed that she might be received to defend her freehold. Entry.

Stonore. You ought not to be received, for you and W. and Thomas

vouche James[1] & estes garanti par qei vous[2] estes saunz jour qaunt a cest play. Jugement &c.[3]

Westcote coment qe nous seoms saunz jour &c qaunt jugement se doit fere il se fera vers nous par qey asez sumes nous a perdre nostre fraunktenement par la defaute nostre baroun.

Malm. [4]qaunt W. M. & T. voucherent qant a M.[4] ceo fust tut le fet le baron par qey &c.

Pass. ad idem si nous ne seoms receu[5] si purroit checun homme qi feust emplede del droit sa femme voucher celui qi rien nad & si ele ne poit estre receue si perdreit ele par la malice son baron son fraunktenement &c saunz aver a la value[6] qar tut vodreit ele mettre avant quitecleime ou autre chose dire en barre del demandant & le baron ne vodra mie a ceo assentir einz vodreit voucher il covendreit qe la femme siwist[7] sa volunte [8]qest de souz ses eles[9] par qey qaunt qe est fet avant ses houres si est le fet le baron le qel fet nel peut barrer ore destre receue.

Spigurnel quey qe ele fist del conicement[10] tauntz qe a ore si est le fet le baron.[11]

Hervi. W. M. & T. ount vouche en le droit & si M.[12] fust ore receue a defendre cest fraunktenement qe ele cleyme par la fyn a terme de sa vye ceo serroit a esteindre la garantie vers[13] T.[14] qar jeo ne say ou le garantie en droit de T. devendreit si ele soit receue. Estre ceo ele ovesqe son baroun & T. ount vouche simplement & en le droit [15]& sount garanti en le droit[15] qar qaunt il voucherent ils ne firount nul mencioun

[1] *δ adds* de Bag. [2] *δ adds* ne poez rien perdre qar tut perdissez les tenemenz demandez vous recoueriez a la value. Item lestatut voet qe la femme seit resceu a defendre son droit par la ou le baron et sa femme sunt enpledez et le baron com celly qest tenant en demene face defaute qe la femme seit resceu etc. mes en vostre cas est tiel etc. ut supra dounc vostre baron qore fait defaute ne la fait pas com celly vers qi cesti bref est porte einz com celly qest somons a garrantir pur quei vous estes en ceo cas vers ly com sil vst vouche un estrange mes sil vst vouche un estrange vous ne serriez my resceu etc. nient plus en ceo cas.

Spig. Coment il seit vouche et coment qil seit somons a garrantir etc. touz iours est il le baron la femme et par sa defaute les tenemenz sunt en point destre perduz.

Ston. Seit resceu et die ceo qele vodra.

Malm. Ele dit qele tynt ceux tenemenz par la fine avantdit ouesqe son baron a terme de lour ij. vies et le fee taille ut supra repose en la persone T. nostre fitz saunz qi etc. et prie eide de ly le quel T. fut prest en court et se ioint de gree etc.

Pus apres le bref fut porte vers meme celly W. de B. et M. sa femme et T. lour fitz. W. M. et T. voucherent a garrantir James de B. qe vint et garranti et voucha outre W. de B. qi fit defaute etc. pur quei la femme vynt et dit ut supra et pria destre resceu.

Ston. Resceu ne deuez estre qar vous meme ensemblement oue W. et T. auez vouche a garrantir et.

[3] *δ adds* si vous devez estre receu. [4–4] Coment qe M. et son baron eyent vouche et coment qil seient garranti etc. *δ*. [5] *δ adds* grant duresse ensuereit qar. [6] *δ adds* et ceo serreit duresse. [7] suysist *ϵ*. [7–8] la volunte son baron *δ*. [8–11] *δ omits*. [9] eeles *ϵ*. [10] comencement *ϵ*. [12] Margerie *δ*. [13] en droit de *δ*. [14] Thomas *δ*. [15–15] *ϵ omits*.

have vouched James, and you are warranted ; and so you are without day for this plea. Judgment etc.

Westcote. Though we be without day etc. yet when judgment is executed it will be executed to our detriment, and so we are in danger of losing our freehold through the default of our husband.

Malmerthorpe. When W., M. and T. vouched, M.'s voucher was, in fact, naught more than the act of her husband. Wherefore etc.

Passeley, ad idem. If we be not received, then it will be open to any man that is impleaded in respect of his wife's right to vouch someone who has nothing ; and so, if the wife is not to be received, she may, by the malice of her husband, lose her freehold etc. without getting its value ; for though she wanted to put forward a quitclaim or to say aught else in bar of the demandant's claim, yet, if her husband would not assent to such a course, but insisted upon vouching, the wife would be compelled to conform herself with his will, which she cannot resist. And so whatever she may have done hitherto is really the act of her husband, and ought not to bar her from being now received.

Spigurnel J. Whatever she has done from the beginning up to the present is the act of her husband.

Staunton J. W., M. and T. have vouched in the right, and to receive M. to defend this freehold which she claims to have for the term of her life by the conditions of the fine would be to extinguish the warranty so far as Thomas is concerned ; for I do not know what would become of the warranty of Thomas's right if she were to be received. Further than this, she, jointly with her husband and T., has vouched simply and in the right, and in the right they are warranted, for when they vouched they made no mention of their estate etc. But now she comes and prays

de lour estat &c mes ore vient ele & prie [1]estre resceu a defendre[1] cest fraunktenement qe ele cleime a terme de sa vye soulement veez[2] coment ceo purreit joyndre.

Peus[3] a un autre jour[4] W. de Brokhulle fust demande & ne vynt poynt par qey agarde feust qe M. recoversist sa demande vers W. de Brokhulle & M. sa femme & T. &c & W. M. & T. vers James[5] a la value & James a la value vers [6]W. de Brokhulle[6] &c.

Nota[7] reson pur quey M.[8] ne fust nient receue en ceo play[9] pur ceo qe ele ne pout anentir la garantie T. par sa receite &c & si ele fust receue la garantie en droit de Thomas fust esteinte aussi bien come devers lui mesme qe serreit inconvenient. Set en le primer[10] plee [11]cel inconvenient ne peut nient estre assigne &c qar en ceo play[11] la garauntie ne se esteint si noun en droit de lui par sa receite & ceo est son avantage com il piert par les resouns dites en le play &c & en droit de son baron qi fet defaute la quele defaute ne lui durra avantage ne ne serra prejudiciele a la femme &c.

[12]III.

Maude qi fut la feme Johan de Welmington porta son bref vers Willem le fiz Willem de Brokhulle et Margerie sa feme et Thomas lour fiz qi vindrent en court et iointement voucherent a garantir James de Burne qi vint en court et entra en la garantie et vocha outre W. le fiz W. de Brokenhulle qi fit defaute apres defaute. Sur ceo vint T. le fiz W. de B. et dit qe W. et M. naueint for qe terme de vie et le fee et le dreit demoura en sa persone par une fyn qil moustra avant a la court qe voleit qe James de Bourne rendi les tenemenz a W. et M. a terme de lour ij. vies et le remeindre taile a Thomas et a ces heirs et pria a estre resceu.

Stonore. Resceu ne deuet estre en ceo plee qar ceo bref est porte vers W. et M. et celi Thomas qi vindrent en court et iointement vocherent a garrantir James de Bourne et futes garanti ausicom tenans de franctenement et desicom il est garanti a meme ceo plee et de memes ces tenemenz ou il poit recouerir a la value si le demandant recouere nentendoms pas etc.

Et ceo fut troue par Roule.

[1]_[1] *from* ϵ; &c. γ. [2] δ *adds* vous. [3] δ *adds* furent aiornes outre. [4] δ *adds* a quel jour. [5] δ *adds* de B. [6]_[6] Willem δ. [7] La ϵ. [8] Margerie δ. [9] ϵ *adds* fust. [10] prescheyn ϵ. [11]_[11] δ *omits.* [12] Text of (III) from η.

to be received to defend this freehold which she claims for the term of her life only. How can you reconcile these two positions of hers ?

Afterwards, upon another day, W. of Brockwell was called and did not answer, and so judgment was given that M. should recover her demand against W. of Brockwell and M. his wife and T. etc. ; and that W., M. and T. should recover the value against James ; and that James should recover the value against W. of Brockwell etc.

Note that the reason why M. was not received in this plea was that Thomas's warranty might not be lost through her being received, for if she had been received Thomas's warranty in the right would have been extinguished as well as her own, which would have been inconsistent with justice. But in the former case no objection could be taken on the possibility of such injustice, for in that case the fact of her being received extinguished the warranty only in so far as her own right was concerned, which was actually to her own advantage, as appears from the arguments in the case etc., and the right of her husband who made default, such default not being allowed to act to his own advantage nor to the prejudice of his wife.

III.

Maud that was the wife of John of Wellington brought her writ against William the son of William of Brockwell and Margery his wife and Thomas their son, who came into Court and jointly vouched to warranty James of Bourne, who came into Court and warranted, and vouched over W. the son of W. of Brockwell, who made default after default. And upon this came T. the son of W. of B. and said that W. and M. had only a life estate, and that the fee and right remained to himself by the terms of a fine which he produced in Court and which testified that James of Bourne had granted the tenements to W. and M. for the term of their two lives with remainder in tail to Thomas and his heirs ; and he prayed to be received.

Stonore. He ought not to be received in this plea, for this writ is brought against W. and M. and this same Thomas, who have appeared and have jointly vouched to warranty James of Bourne ; and you were warranted as tenants of freehold. Consequently, seeing that the warranty he has obtained in respect of these same tenements covers his present plea and entitles him to recover their value in event of the demandant recovering the actual tenements, we do not think etc.

And upon inspection of the Roll the facts were found to be as stated.

Sur ceo vint Margerie et dit qe les tenemenz furent en point de perdre par la defaute le baron et pria a estre resceu.

Stonore. Resceu ne deuet estre pur ceo qe ele fut garanti a meme ceo plee ut supra.

Malm. Il put estre qe James qi ad garanti a W. et M. et T. nad rien dont fere a la vailance et put estre qe le baron fet defaute par colucion entre ly et lenfant donc si sa feme ne seit ressu ele est sanz recouerer.

Ston. Put estre qe James ad assez et tot neit il ore il put aver et estre ceo la cause de statut est qe donne a femme de estre ressu pur ceo qele nauoit altre recouerer auant statut for qe par son bref de dreit mes tot fut ele a la comune ley avant statut ele nauereit pas son recouerer par bref de dreit pur ceo qe ele est garanti et put auer a la value etc.

Stonore.[1] Thomas qi est nome tenant en le bref ad voche a garantir en le dreit et si Margerie fut ore ressu ou devindreit donqe la garantie.

Pass. Si une en presence de son baron use reles et quitclame la court la resseuerieit pas sinon par le voucher son baron partant pert il qe qant qe est fet en le play si est le fet le baron et par consequens ele sera ressu.

Stant. Qant ou son baron esta en jugement et le resseit ele est ausicom descouerte donc depus qe ele est garanti en le dreit qe est un jugement ceo est son fet demene pur quei etc.

Stonore. W. qant il fit defaute ne fut pas partie com baron M. sur qi le bref voet enz fut voche com estranger et issi pert qe ele est hors de cas de statut etc.

Et sic ad judicium et pus M. fit defaute et seisine de terre agarde a demandant etc.

[2]IV.

Et nota qe meme ceti Maud porta au teu bref vers Willem Margaret et Thomas lour fitz qe voucherent ut supra James de Burne qe vint et garranti et voucha outre lavantdit Willem qe fit defaute par qei Margaret

[1] *sic.* *Qu.* Staunton. [2] Text of (IV) from λ.

Thereupon Margery intervened and said that the tenements were on the point of being lost by the default of her husband ; and she prayed to be received.

Stonore. Received she ought not to be, seeing that she has been warranted so far as this plea goes, as above.

Malmerthorpe. But it may be that James who has warranted W. and M. and T. has no title to give a valid warranty, and it may be that the husband has made default in collusion with the infant ; in which case the wife will lose her recovery if she be not received.

Stonore. [On the other hand] it may be that James has sufficient title, or that, if he have it not at the present moment, he may acquire it ; and, beyond this, the Statute was enacted for the purpose of enabling a woman to be received who, previously to the passing of the Statute, had no means of recovery except by a writ of right. But even under the common law, before the Statute was enacted, Margery could not have recovered by a writ of right, as she has been warranted, and is entitled to the value etc.

Stonore.[1] Thomas, who is named in the writ as tenant, has vouched to warranty in the right. If Margery be now received, what becomes of the warranty ?

Passeley. If a wife had released and quitclaimed in her husband's presence, the Court would not receive her except upon her husband's voucher. Here it appears that what was done in the way of pleading was the act of the husband, and consequently the wife will be received.

Staunton J. There where her husband was a party before the Court which received him, she now appears as though she were *discoverte.* Since, then, she is warranted in the right as a matter of judgment, she is now acting quite independently [of any husband]. Wherefore etc.

Stonore. When William made default he did not do so as M.'s husband, and it is against Margery's husband that the writ is directed, but he was vouched as a stranger ; and so it seems that Margery does not come within the Statute.

And so to judgment. Afterwards Margery made default, and seisin of the land was awarded to the demandant.

IV.

And note that that same Maud brought a like writ against William, Margaret and Thomas, their son, who vouched, as above, James of Bourne, who came and warranted, and vouched over the aforenamed William, who made default. Whereupon Margaret prayed to be

[1] *Qu.* Staunton J.

pria destre ressu com ore fit et ne pooit mie estre ressu pur ceo qe si ele ut este ressu la garrantie vers Thomas serreit esteint auxi bien com vers li memes qe serreit inconvenient.

[1]NOTA.

[2]I.

En un *cui in vita* le tenant vocha a garantie un enfaunt dedenz age sicum il ust este de plein age fut somons vient en court fut agarde dedenz age par inspexion de court. Le demandant vient e chalange le vocher.

Ston. A ceo ne devez avener qe vous memes autre foys acceptatez cet vocher en la manere com il fut voche par quay vous navez mye a pleder si noun o le voche. Il est dedenz age par quay agarde cete court qe vous atendez taunt qa lage lenfaunt &c.

[3]II.

Qaunt homme vouche celui qest denz age com homme de plein age[4] tut viegne lenfaunt en court & chalenge le voucher il navera nul avauntage ne le tenant qi vouche desavauntage mes demoera la parole saunz jour viz[5] en cas ou par noun age lei voile qele demoerge. Par *Malm.*[6] *Frisk.* & *Stonore.*

[7]III.

Un enfant deinz age vocha a garantir com celi qi fut de plein age qi vint en court et chalenga le vocher fut a demander si la parole demoura sanz iour ou qe le demandant recouera seisine de terre meintenant.

Toud. La parole demoura sanz jour pur ceo qe le vocher ne est pas en desheritaunce de celi qi est voche si il ne seit en cas de statut.

Par *Malm.* et par *Fris.* etc.

[8]NOTA.

Nota en un cui in vita la ou le bref veut qe le tenant nad entre si noun par le baron la femme qi ceus luy lessa &c. il nest pas travers a dire qil nentra point par le baron sil ne dye par qi &c.

[1] Note from α, β, γ, δ, ϵ, η, θ. [2] Text of (I) from β. [3] Text of (II) from γ collated with δ and ϵ. [4] ϵ *adds* qe. [5] ceo est a saver ϵ. [6] δ *omits*. [7] Text of (III) from η. [8] Note from γ, ϵ. Text from δ compared with ϵ.

received as before; but she could not be received; for, if she had been, the warranty would have been extinguished as against Thomas, as well as against themselves; and this would have been unjust.

NOTE.

I.

In a *cui in vita* the tenant vouched to warranty an infant under age as though he had been of full age. The infant was summoned, came into Court, and was adjudged to be under age by inspection of the Court. The demandant comes and challenges the voucher.

Stonore. To that you ought not to get, for you yourself have previously accepted this voucher without objection; and you can, consequently, now only plead against the vouchee. He is under age; wherefore this Court rules that you must await the infant's age.

II.

When a tenant vouches an infant as though he were of full age, though such infant come into Court and the demandant challenge the voucher, the demandant shall get nothing by his challenge, nor shall the tenant that vouched suffer disadvantage; but the hearing shall stand over without day, that is to say in those cases where the law directs that infancy shall be ground of delay. *Per Malmerthorpe, Friskeney* and *Stonore.* Note.

III.

An infant within age was vouched to warranty as one who was of full age. He came into Court, and the demandant challenged the voucher. The point for decision was whether the hearing should stand over without day, or whether the demandant should recover his seisin of the land at once.

Toudeby. The hearing must stand over without day, since the voucher does not affect the inheritance of the vouchee, in cases where the Statute does not apply.

Per Malmerthorpe and *Friskeney* etc.

NOTE.

Note that in a *cui in vita* where the writ alleges that the tenant had no entry except by the woman's husband who leased the tenement to him etc., it is not a good traverse to say that the tenant did not enter by the husband, unless he say by whom etc. Note.

[1]BAUYNTON *v.* HEGHAM.

Entre porte par iij. ou fut allegge qe les ij. tindrent autrez tenemenz resceue en eschaunges par lour auncestres pur les tenemenz demaundez et le tierz voucha a garauntie les ij. par resoun deschaunges.

Gilbert[2] de Heigham[3] Johan et Thomas ses freres porterent [4]lour bref dentre[5] vers Johan[6] le fitz Rogger de Heigham[7] en les queux mesmes [8]cestui Johan[8] nad entre si noun par Rogger de Heigham a qi Thomas de Heigham jadis baroun Margarie[9] mere les avauntdiz Johan et Thomas et Gilbert[10] ceux tenemenz lessa a qi [11]ele en sa vie countredire ne pout.[12]

Wescote. Johan et Thomas ne pount actioun avoir kar Thomas lour pere qi heirs eux sount resceut [13]certeins tenemenz[13] de Rogger nostre pere qi heir nous sumes en eschaunges pur mesmes les tenemenz qe ore sount demaundez des queux eux mesmes sount seisiz[14] jugement si actioun puissent il aver.

Stonore.[15] quei respounez vous a Gilbert.

Wescote. et come bien affera a Gilbert.

[1] Reported by *a*, *aa*, *β*, *δ*, *ϵ*, *ζ*. Text from *a* collated with the others. Names of parties from E.R. The note in *aa* (and in *β* with slight variations) is:—

Entre ou eschanges furent aleggez et en barre al action et vocher par meme la resoun. Nota ex isto placito quamvis vocatus ad warantum sit in curia quando fuit vocatus adhuc debet summoneri ad warantizandum.

[2–3] le fitz T. de B. *δ*; le fiz Thomas de Bonyngton *ϵ*. [3] Heyham *β*; Boningtone *ζ*. [4–5] un cui in vita *ζ*. [5] *δ*, *ϵ omit.* [6] Thomas *ζ*. [7] Heyham *β*; H. *δ*; *δ*, *ϵ add* e demanderent certeins tenementz com lur droit e lur heritage e. [8–8] ceti Jon *β*. [9] *δ adds* la fille Robert; *ϵ adds* Margaret la fille Robert; *ζ adds* la feile Robert. [10] *δ adds* qi heirs il sunt; *ζ adds* qi heirs &c. qi. [11–12] &c. *ζ*. From this point *δ* and *ζ* are not collatable with the other texts. *δ*, from which *ζ* differs only slightly, reads as follows:

Wesc. Sire nous dioms qe T. de H. baroun Margerie resceut pour ceux tenemenz xv. acres de terre en eschange des queux il mourust seisi apres qi mort les avantdits xv. acres de terre descendirent a T. et a Johan com a fitz et heirs et sunt ore seisiz dounc si nous fuissoms ore enplede de un estranger eux nous garranteront etc. jugement si eux puissent rienz demander et quant a Gilbert en droit de la tierce partie nous vouchoms a garrantir les avantdits J. et T.

Ston. Quant a J. et T. nous vous dioms qe lour pere ne resceut pas de terre en chaunge auxi com il dient prest etc et quant a Gilbert en droit de la tierce partie estoyse le voucher et fut le cas tiel qe Johan et T. furent les fitz J. de H. et T. [Gilbert *ζ*] fut fitz un autre baroun mes de meme la mere.

[13–13] xv acres de terre *ϵ*. [14] *ϵ adds* dont si nous fussoms empleidez de un estrange els nous garranteront etc. [15] From here to end *ϵ* reads:—

Quant a J. e Thomas nous dioms qe lur piere ne resceut nule terre en eschanges cum il dient. Prest etc. E quant a G. de la terce partie estoise le voucher. E fut le cas qe Johan e Thomas furent les fiz Thomas de Hegham e Gilbert fust le fiz de un altre baron mes tutz avoient une mere etc. Pus vyndrent Thomas et Johan et demanderent par qei il les voloit lyer a la garantie. Johan dist par les eschanges ut supra. *Ston.* Nuls eschanges ne se fyrent. Prest etc. E ceo fust trove par enqueste par qei il recoverrent lur demande etc.

BAINTON *v.* HIGHAM.

Writ of entry brought by three demandants where it was alleged that two of these held other tenements which their ancestor had received in exchange for the tenements now demanded; and where the third demandant vouched to warranty the other two by reason of the exchange.

Gilbert of Higham and John and Thomas, his brothers, brought their writ of entry against John the son of Roger of Higham [and demanded certain tenements] into which [they said] that same John had no entry save by Roger of Higham, to whom Thomas of Higham that was formerly husband of Margery the mother of the aforenamed John, Thomas, and Gilbert had leased the said tenements, which Thomas Margery could not in his lifetime contradict.

Westcote. John and Thomas have no right of action, for Thomas their father, whose heirs they are, received certain tenements from Roger our father, whose heir we are, in exchange for these same tenements that are now demanded, and of those tenements [so received in exchange] they are now seised. Judgment whether they have any right of action.

Stonore. What do you answer as to Gilbert?

Westcote. To how much do you allege that Gilbert is severally entitled?

Stonore. lentier de nostre demaunde est xv.[1] acres de terre dount a Gilbert afferont[2] v. acres.

Wescote. Et nous vouchoms a garantie des les v. acres de terre Johan et Thomas soun frere par resoun deschaunges.

Stonore. Johan et Thomas vous dient qe la ou Johan le fiz Roger les bye barrer dactioun par eschaunges nous voloms averrer qe Thomas nostre pere ne resceut nuls tenemenz en eschaunges pour les tenemenz demaundes.

Et les autres le revers et ideo ad patriam.

Et en dreit de ceo qil sount vousches[3] seiont somouns a garauntir furent somouns qi vindront et disoient qe la ou il furent vouchez par resoun des eschaunges &c. ut supra lour pere ne resceut nul tenemenz etc.

Et alii econtra.

Lenqueste vint et dit qe Thomas ne resceut nuls tenemenz en eschaunges [4]pur les tenemenz demandez.

Spig. Ceo est pur laction e pur la garantie qil receut nul tenemenz en escangez[4] soun heir[5] peut estre barre dactioun par eschaunges et[6] lie a la garauntie par quei nous pooms bien doner jugement dil lentier. Par quei agarde ceste court qil rescoverent lour demaunde etc.

Iudicium.

Et sic nota qe eschaunges barront dactioun et lient a garauntye.

Note from the Eyre Roll.

According to the Roll the demandants were Gilbert, John and Thomas, the sons of Thomas of Bauynton ; and they claimed fifteen acres of land in Preston near Wengham.

The plea of John the son of Roger was :—quo ad propartem contingentem predictum Gilbertum de predictis tenementis petitis scilicet quinque acras terre vocat ad warantiam predictos Johannem et Thomam fratres etc. Et quo ad propartes predictos Johannem et Thomam contingentes de predictis tenementis petitis scilicet decem acras terre etc. dicit quod ipsi nichil juris clamare possunt in eisdem in hac parte etc. Dicit enim quod predictus Thomas quondam vir etc. qui predictum Rogerum patrem ipsius Johannis cuius heres etc. de predictis tenementis petitis feoffauit habuit de dono cuiusdam Rogeri quindecim acras terre cum pertinenciis in Littlebourne et Stodmershe in escambium pro tenementis illis de quibus tenementis datis in escambium etc. iidem Johannes et Thomas participes etc. modo sunt seisiti per descensum hereditarium de predicto Thoma patre etc. Et petit iudicium etc.

The replication of John and Thomas, upon which issue was joined, was :—quod predictus Thomas pater eorum nunquam recepit aliqua tenementa in

[1] xxv. β. [2] afferunt β. [3] vochez β. [4]–[4] from β ; *a omits*.
[5] β *adds* ne. [6] ne β.

Stonore. We demand fifteen acres of land altogether, and Gilbert is entitled to five acres.

Westcote. And we vouch to warranty of these five acres his brothers John and Thomas, by reason of exchanges.

Stonore. John and Thomas tell you that whereas John the son of Roger is trying to bar them from their action by setting up exchanges they will aver that Thomas their father received no tenements in exchange for the tenements in demand.

And thereon was issue joined ; and so to a jury.

And [John and Thomas] are to be summoned to warranty in respect of that to which they have been vouched. They were summoned and came and said that, whereas they were vouched in respect of the exchanges etc. *ut supra,* their father never received any tenements etc.

And the other side joined issue.

The jury came and said that Thomas [the elder] received no tenements in exchange for the tenements in demand.

Spigurnel J. [1]That disposes of both the action and the warranty, for he received no tenements by way of exchange ; though an exchange will be a bar to action, while it binds the heir to warranty.[2] By reason of all which we can undoubtedly give judgment for the whole of the demand ; and therefore the Court adjudges that the demandants recover their demand etc. Judgment.

Hence you shall note that a plea of exchange may be a good answer to an action, and that exchanges bind to warranty.

Note from the Eyre Roll—*continued.*

predictis villis de Littleburne et Stodmersh in escambium ex feoffamento predicti Rogeri patris etc. Sicut predictus Johannes dicit. Et hoc petunt quod inquiratur per patriam.

John and Thomas now appear to the voucher to warranty and ask cause to be shown why they should warrant John the son of Roger. To this demand John the son of Roger answers :—quod predictus Thomas quondam vir etc. et pater predictorum Johannis et Thome fratrum etc. cujus heredes etc. habuit de dono predicti Rogeri predictas quindecim acras terre in predictis villis de Littleburne et Stodmerssh in escambium pro predictis tenementis petitis etc. unde iidem Johannes et Thomas fratres etc. nunc per descensum predictum sunt seisiti etc. et racione illius escambii ei tenentur warantizare etc.

The rejoinder of John and Thomas, upon which issue was joined, was :—quod predictus Thomas quondam vir etc. nunquam recepit aliqua tenementa

[1–2] The construction of the text is unsatisfactory, and apparently one or more words have dropped out.

Note from the Eyre Roll—*continued.*

in predictis villis in escambium de feoffamento predicti Rogeri nec aliquid habent per descensum hereditarium de aliquo escambio sicut predictus Johannes filius Rogeri dicit.

The verdict of the jury was:—quod predictus Thomas quondam vir predicte Margerie dedit predicto Rogero patri predictas quindecim acras terre petitas de hereditate predicte Margerie tenendas eidem Rogero ad

[1]WHYTBERD *v.* LE HORE.

Cui in Vita.

[2]Un Wybert[2] de Loundres et Johanne[3] sa femme porterent le *cui in vita* vers un B[4] et disoient qil navoit entre [5]en les tenemenz[5] si noun pus[6] le lees [7]qe W.[7] iadis baroun lauandit Johanne etc. a qi ele en sa vie countredire ne pout.[8] B.[9] voucha a garaunt W. le here et Mabilie sa femme qe furent somounz[10] et fesoient defaute [11]pur quei[11] issit le *Cape ad valenciam* et [12]al jour del *cape*[12] retourne W. leyr[13] fit defaute. Mabilie [14]sa femme[14] apparust et dit qe soun baroun fut [14]malads et[14] en peril de mort issi qil ne pout illoeques venir.

Stantone. Nous navoms qe fere[15] mes nous veoms bien qe vous et vostre baroun estes ioint vouchers issi qil nest paas nomee si noun [16]par resoun de couerture[17] et fet defaute apres defaute[18] par quei vous estes en cas de statut si vous volez soul entrer en le garaunt et pleder nous vous resceueroms.

Et ele [19]entra etc.[19] et dit qe[20] Johanne meisme lessa [21]a B.[21] taunt com ele fut sole issi qil nentra paas par William soun baroun et alii e contra. [22]Et sic ad patriam.[22]

Note from the Eyre Roll.

The writ claims ‘ unum messuagium cum pertinenciis in Maydenestan ut jus et hereditatem ipsius Johanne et in quod idem Thomas non habet ingressum nisi per Thomam Emeri cui Ricardus le Orfeure de Maydenestan quondam vir Juliane filie Ricardi de Bradeburne matris predicte Johanne cujus heres ipsa est illa dimisit cui ipsa Juliana in vita sua contradicere non potuit etc.

[1] Reported by *a* and twice by *δ* in practically identical terms. Names of parties from E.R. Text from *a* collated with *δ*. [2–2] William Wyberd *δ*. [3] Jone *δ*. [4] Thomam filium Willelmi le Hore, E.R. [5–5] *from δ*. [6] par *δ*. [7–7] un B. *δ*. [8] poeit *δ*. [9] *from δ*; *a has* W. [10] sommone *δ*. [11–11] *from δ*. [12–12] *from δ*. [13] *from δ*. [14–14] *from δ*. [15] *δ adds* a ceo. [16–17] come chape *δ*. *The second version in δ adds* au plee. [17–18] *from δ*. [19–19] garrantit *δ*. [20] *δ adds* ele ne put en les tenemenz rien demander qar ele dit qe. [21–21] *from δ*. [22–22] *δ omits.*

Note from the Eyre Roll—*continued.*

totam vitam ipsius Rogeri. Et dicit quod predictus Thomas non recepit aliqua tenementa in escambium in predictis villis de Littlebourne et Stodmersshe nec aliquid eisdem Johanni et Thome descendit ut filiis predicti Thome quondam viri etc. racione alicuius escambii predicti sicut predictus Johannes filius Rogeri dicit.

The judgment was:—quod predicti Gilbertus Johannes et Thomas fratres eius recuperent seisinam suam versus predictum Johannem filium Rogeri de predictis tenementis petitis Et idem Johannes filius Rogeri in misericordia etc.[1]

WYBERT *v.* HORE.

Cui in vita

One Wybert of London and Joan his wife brought the *cui in vita* against one B. and said that he had no entry into the tenements save by the lease which W. that was formerly the husband of the aforesaid Joan, whom she could not during his lifetime contradict, etc. B. vouched to warranty W. Hore and Mabel his wife, who were summoned and made default. Thereupon the *cape ad valenciam* issued; and, upon the return of the *cape*, W. Hore made default. Mabel his wife appeared and said that her husband was ill and in peril of death and so could not come.

Staunton J. We have nothing to do with that, but we see clearly that, though you and your husband are jointly vouched, yet he is only added by reason of your coverture, and he has made default after default. Consequently you come within the Statute,[2] and if you like to warrant alone and to plead we will receive you.

And she warranted etc., and said that Joan herself leased to B. while she was sole, so that B. did not enter by William her husband. And the other side joined issue. And so to a jury.

Note from the Eyre Roll—*continued.*

Thomas the tenant vouches to warranty William Hore and Mabel his wife, who make default. Eventually Mabel appears and asks to be allowed to warrant alone. She is allowed to do so. Her plea, upon which issue was joined, was:—quod predicti Willelmus Whitberd et Johanna nichil clamare possunt in predicto messuagio etc. Quia dicit quod predictum messuagium fuit jus predicti Ricardi le Orfeure quondam viri predicte Juliane ita quod eadem Juliana nunquam aliquid habuit in eodem messuagio nisi tamquam uxor ejusdem Ricardi. Et de hoc ponit se super patriam.[3]

[1] *m.* 40*d.* [2] *Sc.* Statute of Westminster II, cap. iii. [3] *m.* 40.

[1]WYARD *v.* FULEHAM.

[2]I.

Entre. [3]Johannes Wainard[4] per attornatum suum[5] petit versus Thomam[6] de Fulham[7] quatuor acras terre cum pertinenciis in Plumsted ut jus et hereditatem suam et in quas idem Thomas[6] non habet ingressum nisi post dimissionem quam Willelmus de Haueringges quondam vir Lucie filie Johannis[8] auie predicti Johannis cuius heres ipse est cui ipsa in vita sua contradicere non potuit[9] inde fecit Roberto le Cauntour[10] et unde idem Johannes dicit quod predicta Lucia auia etc. fuit seisita [11]de predicta terra[11] in dominico suo ut de feodo tempore pacis [12]tempore Regis[12] etc. capiendo [13]inde expletias ad valenciam[13] etc. Et de ipsa Lucia descendit feodum quibusdam Isabelle et Emme[14] ut filiabus et heredibus et de ipsa Isabella descendit feodum[15] purpartis sue cuidam Johanne ut filie et heredi et de ipsa Johanna quia obiit sine herede de se resorciebatur feodum [16]et jus eiusdem[16] purpartis sue predicte Emme[14] ut auie[17] et heredi. Et de ipsa Emma[18] descendit feodum isti Johanni qui nunc petit ut filio et heredi. Et inde producit sectam.[19]

Et Thomas venit et defendit jus [20]suum quando[20] etc. et [21]bene defendit quia[21] dicit quod predictus Johannes nichil iuris[22] clamare potest in predictis terris. Dicit enim quod alias in curia domini Regis apud Westmonasterium scilicet a die Sancti Johannis Baptiste in quindecim dies anno regni Regis Edwardi patris [23]Regis nunc[23] xxxv^to^ coram R. de Hengham[24] etc. leuauit quidam finis inter quendam Adam de Fulham[25] querentem et ipsum Thomam deforcientem de predicta terra et aliis tenementis per quem finem predictus Adam recognovit predicta tenementa esse ius ipsius Thome ut illa que idem Thomas habet de dono [26]predicti Ade.[26] Et pro hac recognitione etc. idem Thomas concessit predicto Ade predicta tenementa [tenenda] cum suis pertinentiis et illa ei reddidit in eadem curia habenda et tenenda eidem Ade de predicto Thoma et heredibus suis tota vita ipsius Ade[27] reddendo inde per annum unam rosam ad festum [28]Natalis Sancti Johannis Baptiste[28] pro omni seruicio ad predictum Thomam et heredes [29]suos pertinente et[29] faciendo inde capitalibus dominis feodi illius pro predicto Thoma et

[1] Reported by *a*, ϵ, ζ and λ. [2] Text of (I) from *a* collated with ϵ and ζ and E.R. [3–4] Willelmus Waignard ζ. [4] Wyard E.R. [4–5] ϵ, ζ *omit.* [6] Jehann ζ. [7] Folesham ϵ, ζ. [8] ϵ *adds* Dameармeysesone ; ζ *adds* Dammanesone ; E.R. *adds* Dauneanneissone. [9] ζ *adds* ut dicitur. [10] Acatour ϵ ; tanor ζ. Catour E.R. [11–11] ζ *omits.* [12–12] ζ *omits.* [13–13] &c. ζ. [14] Eve ϵ, ζ. [15] jus ζ. [16–16] ζ and E.R. *omit.* [17] amite ϵ, E.R. [18] Eva ϵ, ζ. [19] Here some five or six words have been erased from E.R. [20–20] ζ *omits.* [21–21] ζ and E.R. *omit.* [22] E.R. *omits.* [23–23] nostri ζ. [24] Ingham ζ. [25] Folesham ϵ, ζ. [26–26] ipsius ζ. [27] Thome ζ. [28–28] &c. ζ. [29–29] ζ *omits.*

WYARD *v.* FULHAM.

I.

John Waynard, by his attorney, claimed from Thomas of Fulham four acres of land, with the appurtenances thereof, in Plumstead, as his right and heritage ; into which the said Thomas had no entry except by a lease which William of Havering that was the husband of Lucy the daughter of John and aunt of John [the demandant] whose heir he, John, is granted to Robert the accountant ; which William the said Lucy could not contradict in his lifetime. Of these tenements the aforesaid John says that the aforesaid Lucy his aunt was seised in her own demesne as of fee in time of peace in the time of King etc. and took espleys therefrom to the value etc. And from this Lucy the fee descended to a certain Isabella and a certain Emma as to her daughters and heirs ; and the fee of the said Isabella's share descended to one Joan, as to her daughter and heir ; and from this said Joan, because she died without heir of her body, the fee and right of this same share resorted to the aforesaid Emma as her aunt and heir. And from this same Emma the fee descended to John, the present demandant, as her son and heir. And of that he produces suit. Entry.

And Thomas comes and defends his right etc. And he defends it on the direct issue that the aforesaid John can claim no right in the said lands. For he says that at other time in the Court of our lord the King at Westminster, to wit, on the quindene of St. John the Baptist in the thirty-fifth year of the reign of King Edward that was father of the King that now is, before R. of Hengham etc. a fine was levied between one Adam of Fulham, as complainant, and himself Thomas as deforciant in respect of the land aforesaid and of other tenements. And by the conditions of the said fine the aforesaid Adam acknowledged that the aforesaid tenements were the right of Thomas as tenements which he, the said Thomas, had by the gift of the said Adam. And in consideration of such acknowledgment etc., the said Thomas granted the said tenements with the appurtenances thereof to the said Adam ; and in that same court he surrendered them to the said Adam to have and to hold of the said Thomas and his heirs during the life of the said Adam, rendering therefor yearly on the Feast of the Nativity of St. John the Baptist one rose, in acquittance of all service due to the aforesaid Thomas and his heirs, and rendering to the chief lords of that fee on behalf of the aforesaid Thomas and his heirs all other services

heredibus suis [1]omnia alia[1] seruicia que ad illa tenementa pertinent. Et post decessum ipsius Ade predicta tenementa [1]cum pertinenciis[1] integre reuertantur ad predictum Thomam et heredes suos[3] tenenda de capitalibus dominis [3]feodi illius[4] etc.[5] Et profert partem predicti finis que hoc testatur etc. Et dicit quod ex quo predictus Johannes die et anno leuacionis finis predicti plene etatis existens infra quatuor maria Anglie et extra prisonam infra annum et diem a tempore leuacionis eiusdem finis pedi predicti[6] finis clamium suum non apposuit petit judicium si secundum[7] ei competere possit etc.

Et predictus Johannes dicit quod predictis die et anno quando predictus finis leuauit de predictis tenementis fuit predicta Johanna filia predicte Isabelle particeps eiusdem Johannis infra etatem et hoc paratus est verificare. Et desicut jus predictorum tenementorum spectabat ad predictam Johannam participem et ad ipsum Johannem tanquam ad unum heredem etc. Et eadem Johanna tempore leuacionis predicti finis fuit infra etatem per quod nec eadem Johanna nec ipse Johannes pro non clamio ab accione precludi[8] debeant petit judicium.

[9]Postea venit tam predictus Johannes Wyard quam predictus Thomas in propriis personis etc. Et idem Thomas dicit quod predictus Johannes nichil juris clamare potest in predictis tenementis etc. Quia dicit quod predictus Johannes pendente hic placito isto etc. per scriptum suum pro ipso Johanne et heredibus suis remisit et quietum clamavit in perpetuum predicto Thome de Fuleham [et] heredibus et assignatis suis totum jus et clamium quod habuit vel habere potuit in quinque acris terre cum pertinenciis que quondam fuerunt Lucie que fuit uxor Willelmi de Haveringge avie predicti Johannis in Plumstede in Northmarisco jacentes etc. Ita quod nec idem Johannes nec heredes sui nec aliquis eorum nomine aliquod jus vel clamium in predicta terra cum pertinenciis exigere vel vendicare poterint in perpetuum etc.

Et profert quoddam scriptum sub nomine predicti Johannis quod predictas remissionem et quietam clamacionem testatur etc. Et dicit quod predicta tenementa nunc petita sunt eadem tenementa in predicto scripto contenta etc. Unde petit judicium etc.

Et Johannes non potest dedicere quin predictum scriptum sit factum suum etc.

Ideo consideratum est quod predictus Thomas eat inde sine die et quod predictus Johannes nichil capiat per breve suum set sit in misericordia pro falso clamore.[10]

[1–1] ζ *omits.* [2] ϵ *adds* quiete etc. [3–4] ζ *omits.* [3–5] etc. in perpetuum ϵ. [6] ζ *has a blank space between* finis *and* predicti. [7] a cetero ϵ, ζ, E.R. [8] ζ *adds* non. [9–10] supplied from E.R., *m.* 27*d.* In place of this α has:—'Et postea petit quietam clamacionem per donum dedicitur,' which I cannot translate intelligibly. The other texts omit entirely.

appurtenant to those same tenements. And after the decease of the aforesaid Adam the aforesaid tenements with the appurtenances thereof were to revert wholly to the aforesaid Thomas and his heirs, to be held by them of the chief lords of that fee etc. And he proffers part of the aforesaid fine which shows this. And he further says that though the said John was of full age on the day and year when the said fine was levied, and was within the four seas of England and was not imprisoned, yet within a year and a day of the levying of the said fine he entered no claim upon the foot of the said fine ; and he asks judgment whether it be now open to the said John to make etc.

And the said John says that on the said day and year when the said fine was levied in respect of the said tenements the aforementioned Joan, that was daughter of the aforementioned Isabella, was a parcener with him, the said John, and was under age ; and this he is ready to aver. And since the right in the aforesaid tenements was in the said Joan his parcener and in himself as in a single heir, and since the said Joan at the time of the levying of the said fine was under age, therefore neither the said Joan nor he John is barred from action by reason of such failure to claim ; and he asks for judgment.

And afterwards came both the aforesaid John Wyard and the aforesaid Thomas in person etc. And the aforesaid Thomas says that the aforesaid John can claim naught in the aforesaid tenements etc. ; by reason, he says, that the aforesaid John by his deed, while this same suit was pending etc. did on his own behalf and on behalf of his heirs, release and quitclaim for ever to the aforesaid Thomas of Fulham his heirs and assigns all the right and claim which he had or might have in and to those five acres of land together with the appurtenances thereof situate in Plumstead in Northmarsh etc. which formerly were the property of Lucy that was wife of William of Havering and aunt of the aforesaid John, to the effect that neither the aforesaid John nor his heirs nor any other person in their name could demand or claim any right or title in the aforesaid land and the appurtenances thereof for ever etc.

And he makes *profert* of a certain deed in the name of the aforesaid John which testifies to the aforesaid release and quitclaim. And he says that the tenements now claimed as aforesaid are the same tenements as are comprised in the aforesaid deed. And he asks judgment thereof etc.

And John cannot deny that the said deed is his own deed.

And so judgment is given that the aforesaid Thomas go away *sine die* and that the aforesaid John take naught by his writ, but be in mercy for his wrongful claim.

[1]II.

Ou noun cleim de fin fut mis en barre.

Un Johan Waynard porta soun *cui in vita* en le *post* uers Thomas de Felsham etc.

Thomas dit qe un fin se leva certein an etc. entre un Adam et li a qi Johan fut estrange par vertu de qele fin il est einz et demanda jugement del houre qe meme ceti Jon a meme ceu tens de la fin leue fut de plein age deinz les iiij. mers et hors de prisone et ne mit pas soun cleim deinz lan et le jour du tens de la fin leue sil poet en ceuz tenemenz ren demander.

Johan dit qe a meme la tens de la fin leue si avoit il un parcener Jone par noun qe esteit deinz age et prest del auerrer pur qei il lour semble qe Jon ne Jone par lour noun cleim ne deiuent de accion estre forclos et de ceo demourerunt en jugement.

[2]ANON. *v.* ANON.

Cui in vita. Une A. porta son *Cui in vita* vers un J. de G. et demanda par son bref ij. acres de terre le tenant demanda la vewe le tenant[3] ly fesoit la vewe de terre dount il fut tenant le tenant vint en court pus et dit qil ne poeit auer sa demande ne il ne poeit respondre qe la ou il demanda vers ly ij. acres il dit qun R. fut tenant de une Rode de mesme la terre nent nome etc. jugement du bref.

Le demandant replia et dit qil fut pleinement tenant de sa demande.

Et sur ceo lenqueste se ioint qi vint et dit qe ij. acres un tiel baroun un tiel auoit aliene etc. qil demanda il disoient qe un R. tient une Rode etc. mes il disoint qe J. de G. fut tenant de quanqe il auoit mys en vewe.

Spigurnel. Agardoms qil ne prist rienz par soun bref.

Et istud videbatur quibusdam mirabile pur ceo qe autre chos ne demanda il si noun ceo qil mist en vewe et de ceo fit le descent[4] pleinement tenant.

[1] Text of (II) from λ. [2] Reported by δ only. [3] *Sic* in the text, but obviously a mistake for *demandant*. [4] *Sic* in the text, but probably a mistake for *defendant*.

II.

Where an omission to claim under a fine was alleged in bar of action.

One John Waynard brought his *cui in vita* in the *post* against Thomas of Felsham etc.

Thomas says that a fine was levied in a certain year etc. between one Adam and himself, to which John was not a party ; by which fine he, Thomas, is in possession. He asks for judgment whether this John, being at the time of the levying of the fine of full age, within the four seas, and not imprisoned, and not having made his claim within a year and a day of the levying of the fine, can now claim anything in these tenements.

John says that at the time of the levying of the fine he had a parcener, Joan by name, who was under age, and that he is ready to aver. Wherefore it is submitted that neither John nor Joan should lose their right of action by their failure to claim ; and these abide the judgment of the Court.

ANON. *v.* ANON.

Cui in vita.

One A. brought his *cui in vita* against one J. of G. and claimed by his writ two acres of land. The tenant demanded view. The demandant allowed him a view of the land of which he was tenant. Afterwards the tenant came into Court and said that the demandant could not sustain his claim and that he, the tenant, need not answer him ; for whereas the demandant claims from him two acres, he says that one R., who is not named in the writ, is tenant of one rood of this same land. Judgment of the writ.

The demandant answered and said that the tenant was tenant of the whole of his demand.

And thereupon was a jury called that came and said that such an one's husband had alienated etc. the two acres in demand, and that one R. holds one rood thereof ; but they found that J. of G. was tenant of all the land put in view.

Spigurnel J. Judgment that the demandant take naught by his writ.

And to certain people that judgment seemed a strange one, for the demandant had claimed naught beyond what he had put in view, and had laid that the defendant was tenant of the full demand.

[1]NOTA.

Nota de une meruilouse veue.

Nota qe la ou cui in vita fut porte uers tenant de .ij. acres de terre et le tenant demanda la vewe le demandant li fesoit la veue de tere etc. le tenant allega non tenure de une rode de tere et li dona tenant et demanda jugement du bref le demandant dit qe pleinement tenant etc. Lenqueste vint et dit qe les .ij. acres de tere qe le baroun le demandant aliena et les ques il demande un Richard tent une rode mes il diseient qe le tenant tent qant qest mis en vewe.

Spigurnel agarde qil ne prendra par soun bref.

Et istud videbatur mirum pur ceo qe autre chose ne demanda il si noun ceo qe fut mis en veue et ceo tenit le tenant pleinement.

[2]BUG *v.* BOCLONDE.

Cui in vita.

Maud qe fut la femme Jon Buge porta soun *cui in vita* et fut le bref tel. Precipe W. de Boclonde quod reddat Matilda que fuit uxor J. Buge .iij. rodas terre et pasturam ad .x. oues cum pertinenciis in B. e dit qe ele meme de ceo en fut seisi de les .ij. rodes de tere en soun demene com de fee et de dreit et de la pasture com de fee et de dreit.

Bacoun. Jugement du bref car le bref voet precipe quod reddat tantam terram et pasturam et suppose par le reddat qe pasture seit demene jugement.

Cant. Homme auera bref precipe quod reddat aduocacionem ecclesie et si nest il mie demene.

Frisk. Homme vous dit qe vous demandez cete pasture auxi com ceo fut demene ou naturelment girreit le quod permittat jugement du bref.

Malm. Le bref est en cas asset bon qar si un homme moi enfeffe de certein tenemenz ensemblement ou la pasture a x. befs. et le feffour seit seignour du soil et ieo de ceo deuie seisi et ay une fille et heir qest seisi et print baroun son baron aliene les tenemens ensemblement ou la pasture a dautre qe a seignour du soil et de la pasture et soun baron deuie ele dirra en soun bref precipe quod reddat terram et pasturam pur ceo qil nest mie seignour du soil ou la pasture est qe vers seignour du soil ou la pasture git le quod permittat sil le deforce et vers autres precipe quod reddat.

[1] Note from λ. [2] Reported by λ only. This report seems very like to a variant of *Bold* v. *Jordan* (see p. 130 *supra*); but as λ reports both cases, *Bug* v. *Boclonde* as a *cui in vita*, and *Bold* v. *Jordan* as a *cui ante divorcium*, it seems safer to give the present report here.

NOTE.

Note that where a *cui in vita* was brought against a tenant of two acres and the tenant demanded a view, the demandant granted him view of the land etc. The tenant alleged non-tenure of one rood of land and named the actual tenant thereof, and asked judgment of the writ. The demandant said that he was tenant of the whole demand etc. The inquest came and said that of the two acres of land which the demandant's husband alienated and which the demandant claims one Richard holds one rood; but they said that the tenant held all that which was in the view. Note as to a strange view.

Spigurnel J. gave judgment that the demandant should take naught by his writ.

And that seemed a strange judgment, for the demandant claimed naught beyond what was in the view, and that was all held by the tenant.

BUG *v.* BUCKLAND.

Maud that was wife of John Bug brought her *cui in vita*; and the writ ran in this wise: Command W. of Buckland that he render to Matilda that was wife of J. Bug three roods of land and pasture for ten sheep, with the appurtenances thereof in B. And she said that she was seised of the two acres in her own demesne as of fee and right, and of the pasture as of fee and right. *Cui in vita.*

Bacon. Judgment of the writ; for the writ says 'Command him to render so much land and pasture,' and the term 'render' presupposes the pasture to be demesne. Judgment.

Cambridge. You can have a '*Precipe quod reddat*' for the advowson of a church which is not demesne.

Friskeney. We tell you that you are claiming this pasture, as though it were your demesne, in which case the *quod permittat*, would properly lie. Judgment of the writ.

Malmerthorpe. The present writ is good enough; for if I be enfeoffed of certain tenements together with pasture for ten bullocks by a feoffor who is lord of the soil, and I die seised thereof, leaving a daughter and heiress who takes seisin and marries, and her husband then alienates the tenements and the pasture together to other than the lord of the soil and the pasture, and then dies, she will say in her writ *precipe quod reddat* the land and the pasture because the deforciant is not lord of the soil and the pasture; for the *quod permittat* lies only against a deforciant that is lord of the soil and the pasture, and against all others the *quod reddat.*

Westcote. Sire vous souent il coment en la court fumus autre fitz en graunt debat en un teu bref Precipe tali quod reddat tali passagium ultra talem aquam ou il demanda un profit en autre soil meme les resons furent allegez dune part et dautre qe sunt ore ci ou derein fut demande ci celi vers qi le bref fut porte fut seignour du fontz de lewe ou il demanda cel passage fut dit qe nenil pur qei le bref fut agarde bon etc. auxi de sa etc.

[1]ANON. *v.* ANON.

Cui in vita. Une feme porta son *cui in vita* uers un tenant et se fit tel title quod clamavit esse ius suum de dono Johannis et Lauencii etc.

Caunt. La ou ele fet title de doun Johan et Laurent qe ele nauoit unqes resceu de doun Johan prest etc.

Stonore Respondez a doun Laurent.

Caunt. Nous nauons pas mester a respondre a ceo qe nous pledoms a vostre title q᷑ suppose un faus qe ele auoit unqes resceu de doun Johan etc. et issint peche vostre est matere.

Stonore Si ieo porte mon bref uers .ij. com uers comunitenans tot neit lun respondu et lautre seit tenant de ma demande mon bref est assez bon ausi de cet part si ele neit reson de doun Johan le bref est meintenable si ele eit de doun Laurent.

Spigurnel Nest pas semblable qe en vostre cas si bref seit porte uers .ij. et lun face defaute pur quei le cape est agarde a qel bref retourne lautre vint en court et dit qil est tenant de vostre demande sa conisance en court ly fet responsable pur quei respondez a ceo qil dient.

Stonore Nous voloms meintenir nostre bref et sic ad patriam.

[2]ANON. *v.* ANON.

Cui in vita. [3]Un bref dentre en les queux le tenant[3] nauoit entree si noun par J. de C. baroun Alice cosyn R.[4] qe ceo lessa a qi ele en sa vie ne pount contredire.

[1] Reported by η only. [2] Reported by δ and λ. Text from δ collated with λ. [3–3] Un Willem porta soun cui in vita vers un femme qe dit qe meme celi λ. [4] le demandant λ.

Westcote. Sir, you will remember that we had a long argument in this Court in a previous case where the writ ran *Precipe tali quod reddat tali passagium ultra talem aquam,* where what was demanded was a profit in the soil of another. Exactly the same arguments were put forth on one side and the other as have been put forward in the present case. Then, at last, the question was asked whether the deforciant against whom the writ was directed was lord of the water-course across which the right of passage was demanded. The answer was that he was not. Whereupon the writ was ruled to be good etc.; and so in this case.

ANON. *v.* ANON.

A woman brought her *cui in vita* against a tenant, and she claimed to be entitled as of right by the gift of John and Lawrence etc. *Cui in vita.*

Cambridge. She bases her title on a gift from John and Lawrence. We say that she never received aught by the gift of John. Ready etc.

Stonore. Plead to the gift of Lawrence.

Cambridge. There is no need for us to plead to that specifically, for we plead to your title as set out in your writ; and that falsely alleges that the demandant received something by the gift of John etc.; which is a material mis-statement.

Stonore. If I bring a writ against two persons as joint-tenants, and one of them does not appear, yet if the other says he is tenant of my demand, my writ is good enough. And so here even if the demandant is wrong in saying that she had aught by the gift of John, yet, if she had aught by the gift of Lawrence, the writ is maintainable.

Spigurnel J. The cases are not parallel. In the case you suppose, where the writ is brought against two, one of whom makes default, the *cape* would be awarded; and if upon the return of that writ the other one came into Court and said that he was tenant of your demand, his acknowledgment in Court makes him responsible. Consequently you must plead to their counting.

Stonore. We will abide by our writ. And so to a jury.

ANON. *v.* ANON.

A writ of entry alleging that the tenant had no entry save by J. of C., the husband of Alice and cousin of R. who leased them, and whom, during his lifetime, Alice could not contradict. *Cui in vita.*

Ingham. La ou vostre bref suppose qe le tenant nad entree si noun par le lees qe J.[1] ly lessa J.[1] ne ly lessa point prest etc.

Lauf. Tant amount qe le tenant nauoit entree par J.[1] dites par qi donqes si me donez bon bref et si voillez cesti bref abatre [2]qar si il ne ly lessa point donqe nauoit il entre pas par my ly.[2]

GOLDINGTONE. Un est a trauerser lentree et lautre est a traverser le lees qar la ou homme traverse lentree il couient dire par qi il est entre mes la ou il trauerse le lees nemy pur ceo saunz ceo qe voillez dire [3]autre chose[3] vous averez vostre jugement.

Et meintenant vint Sire [4]HERVI et demanda du[4] tenant sil voleit atteindre a cel averement qe ly dit par qi il auoit entree et ceo [5]agarda il[5] pur ley.

[6]*Ass.* Par R. R. et H.[6] et noun pas par Johan prest etc.

Et alii e contra.

[7]LUNGE *v.* SCHRILOND.

Pax. [8]Thomas le Lunge & Emme[8] sa femme[9] portent bref dentre[10] vers Robert de Schrilond[11] &[12] demanda[13] (*sic*) certeinez tenementz [14]& rente &[15] par un autre *precipe* demanda vers[16] Margerie[17] qi fust la femme Jon de Fogestone[18] x. acres de terre & v.*s.*[19] de rente.[20] Margerie dit qele tint les tenementz en[21] dower & la reversioun regardaunt[22] a Robert[23] & le vouche a garantir. Robert[24] entra en la garantie.

Peus *Pas.* vynt & pria conge dacorder [25]entre T. et Emme[26] sa femme demandauntz & R. de Scrilond[27] tenant en demene des tenementz vers li demandez & mesme celui Robert tenant[28] par sa garantie des tenementz vers Margerie[29] demandez des queux il fust entre en la garantie.[30]

Et fust la pies tiele qe T. & Emme[31] conucerent[32] les tenementz contenuz [33]en le bref[34] estre le droit Robert & ceo lui relesserent & qiteclamerent a R.[35] & a ses heirs &c de T. & Emme[31] & de les heirs

[1] Johan λ. [2–2] *Stonore.* Il ne vous trauerse point lentre mes vous dit qe la ou vostre bref supose qe Jon le lessa Jon ne li lessa point prest &c. *Lauf.* Sil ne lessa pas donqe nauoit il mie entre λ. [3–3] *from* λ. [4–4] *from* λ. *δ* is very obscure. [5–5] *from* λ. agardoms *δ*. [6–6] *Ston.* par Robert et Willem λ. [7] Reported by *γ*, *δ*, *ε*, *ζ* and λ. Text from *γ* collated with the others. [8–8] Un Thomas Lounge et Maud *δ*; Thomas Kog et Eva *ζ*. [9–12] λ *omits.* [10] *δ omits.* [11] Schirlond *δ*; Shirland *ε*; Scirelok *ζ*. [13] demandent *ζ*; demanderent λ. [14–16] en N. de vers Robert de Scurlande par un precipe et (*sic*) λ. [15] etc. *δ*. [17] Maud *δ*; Margarete λ. [18] B. *δ*. [19] C.*s.* *ζ*. [20] λ *adds* par un autre precipe. [21] *ζ adds* noun de. [22] *ζ omits.* [23] *δ adds* de W.; *ζ adds* etc. [24] *ζ adds* somouns. [25–30] qant al primer precipe et qant al seconde λ. [26] *δ omits.* [27] S. *δ*; Scrielok *ζ*. [28] teneroit *δ*. [29] M. *δ*. [31] M. *δ*; Eve *ζ*. [32] conissent *ζ*. [33–34] *δ omits.* [35] ly *ε*.

Ingham. Whereas your writ supposes that the tenant had no entry save by the lease which J. granted to him, we say that J. did not lease. Ready etc.

Laufer. That is tantamount to denying that the tenant entered by J. Allege, then, by whom he did enter; and suggest a good writ to me if you want to abate this one; for if J. did not lease to the tenant, then the tenant did not enter by him.

Goldington J. It is one thing to traverse the entry and another to traverse the lease; for, when the entry is traversed, it must be alleged through whom the tenant had entry, but not so where the lease is traversed. Consequently, unless you are going to say something more, judgment will go against you.

Thereupon Sir Hervey Staunton J. intervened and asked the tenant if he desired to make averment by whom he entered; to which averment he held that he was entitled by law.

Assheley. By R. R. and H. and not by John. Ready etc.

And the other side joined issue.

LONG *v.* SHIRLAND.

Peace.

Thomas Long and Emma his wife brought a writ of entry against Robert of Shirland, and demanded certain tenements and rent; and by another writ they demanded against Margery that was wife of John of Folkestone ten acres of land and five shillings of rent. Margery said that all the tenements were in dower, with reversion to Robert; and she vouched him to warranty; and afterwards Robert warranted.

Passeley came and prayed leave that T. and Emma his wife, the demandants, and R. of Shirland, the tenant in demesne of the tenements claimed from him, and also Robert that was tenant by his warranty of the tenements demanded from Margery which he had warranted, might come to an agreement.

And the peace was after this wise, to wit: T. and Emma acknowledged that the tenements named in the writ were the right of Robert, and they released and quitclaimed them to R. and his heirs etc. on

Emme[1] &c & en le retreire[2] de la pees il ne fist nule mencioun de ceo qil fust tenant de partie des tenementz en demene & de partie par sa garantie mes la note fust tiele. [3]Inter Thomam [4]le Lunge[4] & Emmam[1] uxorem ejus ejus (*sic*) petentes & R. de Schrilond[5] tenentem de xx. acris terre[6] xv.*s*. redditus cum pertinentiis in[7] B. & inter eosdem Thomam & Emmam[8] petentes & R. de Schrilond[5] quem[9] Margareta que fuit uxor &c vocat ad warantizandum tenentem de x. acris terre & v.*s*. redditus cum pertinentiis in eadem villa.

[10]NOTA.

Pax. Nota il yavoit une pees[11] trete sur reles &c ove la garrantie aussi com si[12] la pees[13] eust este trete[14] sur rendre ou doun & la court feust en awer a recevir la pur la garrantie mes peus feust receue &c.

[15]ANON. *v.* WYARD.

Entre dum fuit infra etatem. Un porta bref de entre uers une Lorette qi fut la femme R. Wyard en lez ques ele nad entre sinon par un J. a qi lauandit Thomas ceus lessa tant com il fut denz age.

Pass. Lorette entra par W. de Aston et nient par J. prest etc.

Bacoun. Lorette entra par J. ausicom nostre bref suppose.

Pass. Al auerement ne auendret pas qe veit a fyn qe est record de court par quei ele est entre jugement jugement si a nul auerement est contrarie de cette fyn qe est record devez auenir.

Spigurnel. Thomas ne nul de ceus auncestres furent partie a cete fyn qe vous alegget, pur quei vous ne poet pas toler lauerement, et stet.

[16]NOTA.

Recordum. Un Johan de Irlaund suist un Record de un breve dentrey hors du baunke tantqe en Eyre et auoyent plede al pays sur ceo vynt labbe de la Bataille par baillif et chalenga dauoir la conissance du plee pur ceo

[1] M. δ; Eve ζ. [2] retret ζ. [3–7] Pax entre Thomas le ling et Emme sa femme demandant et Robert de Scurlonde tenant de tenant [*sic*] de tenemenz en λ. [4–4] de L. δ; Kog ζ. [5] G. δ; Scirelok ζ. [6] ϵ *adds* et. [8] M. δ; λ *adds* uxorem ejus. [9] quod δ. [10] Note from γ, δ and ϵ. Text from γ collated with δ and ϵ. [11] retrete δ. [12] *from* ϵ; γ *and* δ *omit.* [12–13] le garrante δ. [14] retorne δ. [15] Reported by η only. [16] Reported by $\gamma\gamma$ only.

behalf of T. and Emma and the heirs of Emma etc. And in the recitals of the peace was no mention made that Robert was tenant in demesne of part of the tenements and of part by his warranty, but the note[1] ran after this wise: Between Thomas Long and Emma his wife, demandants, and R. of Shirland, tenant of twenty acres of land and a rental of fifteen shillings together with the appurtenances in B., and between the same Thomas and Emma, demandants, and R. of Shirland, tenant of ten acres of land and a rental of five shillings with the appurtenances in the same town, whom Margaret that was wife of etc. vouches to warranty.

NOTE.

Note that a peace that had been settled upon a release etc. with a warranty was tendered in evidence as though it were a peace settled upon a surrender or gift; and the Court doubted whether it ought to receive it as a warranty. But afterwards it was received etc. Peace.

ANON. *v.* WYARD.

A certain man brought a writ of entry against one Lauretta that was wife of R. Wyard, alleging that she had no entry into the tenements but by one J. to whom the aforenamed Thomas leased them while he was within age. Entry while the lessor was an infant.

Passeley. Lauretta entered by W. of Aston, and not by J. Ready etc.

Bacon. Lauretta entered by J. even as our writ alleges.

Passeley. To that averment you will not get, for here is a fine that is a record of the Court, and by this fine Lauretta had her entry. Judgment. Judgment whether you should be allowed to make any averment that is contrary to this fine which is of record.

Spigurnel J. Neither Thomas nor yet any ancestor of his was a party to this fine which you plead, consequently you cannot bar their averment, and it must stand.

NOTE.

One John of Ireland had sued the record of a writ of entry out of Bank into Eyre, and had pleaded to a jury. Whereupon came the Abbot of Battle by his bailiff and claimed to have the right to hear the plea, Record.

[1] A docket taken by the chirographer from which he transcribes the indentures.

qe ceo fut dedenz la franchise de Wye hors de quele franchise nul plee vendra ceynz et les Justices vendront en mesme la franchise pur tenir les pleez del eyre.

STAUNTONE pur ceo qil unt plede deuant cel hour en baunke et issi le temps est passe pur la franchise chalenger nous agardoms lenqueste.

[1]NOTA.

Nota qe la ou bref dentre en le post fust porte vers un tenant qi voucha a garantir un John qi vint en corte e garrantist e dit qele demandant pout aver un bref en le per e demanda jugement du bref.

STANTONE vous estes entre en la garantie qest en le droit e si vous fuissiez receu de abater ceo bref en le manere come vous le challenges vous pledriez de plus haut en plus bas qe ley ne suffre point par quei dites autre chose &c.

[2]ANON. *v.* STADEBURY.

De ingressu super disseisinam.

[3]Un A.[4] porta son bref dentre [5]sur disseisine[5] vers Jon de Stadebury & [6]demanda certeins tenementz &c. en les queux il[6] ne avoit entre si noun [5]par un B. qi a tort disseisi[5] un Daniel[7] aiel[8] lavantdit A.[9]

Jon[10] dit qe une[11] fyn se leva de mesme les tenementz en la court le roi entre [12]mesme cesti Jon[13] & un Robert piere Daniel[14] par qele fyn Robert conust les tenementz estre le droit Jon[15] com ceus qil avoit de son doun & obligea lui & ses heirs a la garantie [16]e demandoms jugement [17]desicom il est son heir [18]& nous garaunti vers estraunge &c. si &c.[19]

Pas [20]& *Toudeby*[21] nous demandoms[22] ceus tenementz de la seisine Daniel nostre ael [23]et [24]vous alleggez[25] fyn qi se leva entre vous[26] & R. piere Daniel[27] issi qe la ou nous prenoms nostre title de plus bas nous [*sic*] biez barrer [28]par fyn leve entre[29] persones plus haut [30]& ceo par ceste fyn nel poez fere[31] &c.[32]

[1] Note from θ. [2] Reported by γ, δ, ϵ, λ. Text from γ collated with the others. [3–10] un bref dentre sur la disseisine fut porte vers J. de S. ou le demandant dit qil nauoit entre si noun par tiel qi a tort et saunz jugement disseisi un D. ael le demandant. Le tenant δ. [4] Willem λ. [5–5] etc. λ. [6–6] dit qil λ. [7] David λ. [8] λ *adds* le demandant. [9–11] West. Un λ. [12–13] le pere et (*sic*) le tenant λ. [13] δ *adds* le pere le tenant. [14] David λ. [15] le pere le tenant δ, λ. [16–19] et si nous fusoms etc. Jugement si rien put demander λ. [17–19] del oure qil fust son heir e il ly serroit tenuz a garantir vers estrange &c. si il poeite rien demander &c. ϵ. [18–19] et serreit lie a la garrantie sil fut enplede de un estranger sil poeit rien demander δ. [20–21] δ, λ *omit.* [21–22] vous demandez λ. [23–25] et vous mettez avant λ. [24–25] vous mettez avant une δ. [26] vostre pere λ. [27] D. δ; David λ. [28–32] jugement λ. [29] de δ. [31–31] jugement δ.

seeing that it arose within the franchise of Wye, and that no plea from that franchise was triable here, for the Justices will enter that same franchise to hold the pleas of the Eyre.[1]

STAUNTON J. Seeing that they have previously pleaded in Bank and that the time to claim the franchise has gone by, we award the jury [here].

NOTE.

Note that where a writ of entry in the *post* was brought against a tenant that vouched to warranty one John who came into Court and warranted and said that the demandant might have a writ in the *per*, and demanded judgment of the writ :—

STAUNTON J. You have warranted, and warranty goes to the right, and if you were now to be admitted to abate this writ by your present challenge you would be descending from a plea of higher nature to one of lower nature, and that the law does not allow ; so you must plead over etc.

ANON. *v.* STATENBOROUGH.

Entry *sur disseisine.*

A. brought his writ of entry *sur disseisine* against John of Statenborough, and demanded certain tenements etc. into which [he said] John had no entry save by one B. who wrongfully disseised one Daniel, the grandfather of the aforesaid A.

John said that a fine had been levied in the King's Court in respect of these same tenements between this aforementioned John and a certain Robert, the father of Daniel ; and by this fine Robert acknowledged that the tenements were the right of John by the gift of him, Robert ; and Robert bound himself and his heirs to warranty. And since A. is [Robert's] heir and is bound to warrant as against a stranger, we ask judgment whether etc.

Passeley and *Toudeby*. We claim these tenements by the seisin of Daniel our grandfather ; and you allege a fine that was levied between you and R., Daniel's father ; and are consequently by means of this fine which was levied between more remote parties trying to bar a claim which we are making upon a more recent title, wherefore by such a fine you cannot etc.

[1] See vol. I, p. lxii.

Westcote si Daniel[1] fust ore en vye & porta une assise de novel disseisine vers nous il navendroit mie [2]al assise[2] countre le fet son piere sil ne moustrast title coment &c. a mult plus fort ne freez vous qi demandez vers[3] ly.

Toudeby les tenementz demandez ne sount pas compris deinz la fyn prest.

Et alii econtra. Ideo &c. [4]Nota qe[5] justices & seriauntz [6]tindrent pur certeyn ley qil navereit nule assise countre la fyn des tenementz compris deinz la fyn saunz mustrer title coment fraunktenement lui soit peus acru &c.[7]

Note from the Eyre Roll.

There were several demandants, descendants of one Daniel, through whose seisin they claimed.

Their count was:—quod predictus Daniel pater etc. et auus etc. fuit seisitus de predictis tenementis cum pertinenciis in dominico suo ut de feodo et jure tempore pacis tempore domini Edwardi Regis patris Regis nunc capiendo inde expletias ad valentiam etc. Et de ipso Daniele quia predicta tenementa sunt de tenura de Gauelkynde et partibilia etc. descendit jus etc. predictis Galfrido Mauricio et Fulconi qui nunc petunt simul etc. et cuidam Johanni et filiis et heredibus. Et de ipso Johanne descendit jus propartis sue predictis Cristiane et Johanni fratri ejus qui nunc petunt simul etc. et predicto Simoni qui non sequitur etc. ut filiis et heredibus etc. et in que etc. et unde producunt sectam etc.

John of Statenborough's plea was:—quod predicti Galfridus et alii nichil juris clamare possunt in predictis tenementis quia dicit quod alias in Curia domini Henrici Regis aui domini Regis nunc apud Westmonasterium scilicet a die Pasche quindecim dies Anno regni sui vicesimo nono coram Roberto de Nottyngham et Sociis suis justiciariis etc. levauit quidam finis inter quemdam Thomam filium Johannis patrem ipsius Johannis de Scathebury cujus heres ipse est querentem et predictum Robertum patrem predicti Danielis de cujus seysina etc. auum predictorum Galfridi Mauricii et Fulconis etc. et proauum predictorum Cristiane et Johannis fratris ejus qui sequuntur et predicti Simonis qui non sequitur etc. cujus heredes ipsi sunt impedientem per quem finem idem Robertus recognovit predicta tenementa cum pertinenciis esse jus ipsius Thome ut illa que idem Thomas habuit de dono predicti Roberti habenda et tenenda eidem Thome et heredibus suis in perpetuum et obligauit se et heredes suos ad warrantizandum predicto Thome et heredibus suis predicta tenementa cum pertinenciis etc. unde dicit quod si ipse ab aliquo alio de tenementis predictis cum pertinenciis implacitaretur etc.

[1] D. δ; David γ. [2–2] δ *omits*. [3] parmy ϵ. [4–7] sciendum qe tut la court Justices et seriantz furrent de opinion qil couendreit par force de ley a la fine δ. [5] λ *adds* tote la court. [6–7] diseient qil covendreit par force de lei respondre a la fin λ.

Westcote. If Daniel were yet alive and were to bring a writ for an assize of novel disseisin against us he would not be successful in getting such an assize in face of his father's deed, unless he showed how title [of freehold had subsequently accrued to him], much less will you succeed in your demands against him.

Toudeby. The tenements demanded are not included in the fine. Ready etc.

And the other side joined issue. And so to a jury. And note that the Justices and Serjeants held for clear law that an assize of novel disseisin could not have been gotten in face of the tenements included in the fine without showing by what title an estate of freehold had subsequently accrued etc.

Note from the Eyre Roll—*continued.*

predicti Galfridus et alii modo petentes etc. racione predicta tenerentur ei tenementa predicta cum pertinenciis Warrantizare etc. et profert inde partem predicti finis in hec verba. Hec est finalis concordia facta in curia domini Regis apud Westmonasterium a die Pasche in quindecim dies anno regni Regis Henrici filii Regis Johannis vicesimo nono coram Roberto de Notingham Johanne de Cobeham Willelmo de Sancto Edmundo et Magistro Roberto de Shardelawe Justiciariis et aliis domini Regis fidelibus tunc ibi presentibus Inter Thomam filium Johannis querentem et Robertum Daniel impedientem de una carucata terre cum pertinenciis in Chiselherst. Unde placitum Warantie carte summonitum fuit inter eos in eadem Curia scilicet quod predictus Robertus recognosceret predictam terram cum pertinenciis esse jus ipsius Thome ut illam quam idem Thomas habet de dono predicti Roberti habenda tenenda eidem et heredibus suis de predicto Roberto et heredibus suis in perpetuum Reddendo inde per annum sex denarios ad festum sancti Michaelis pro omni seruicio secta Curie consuetudine et exaccione Et idem Robertus et heredes sui Warantizabunt acquietabunt et defendent eidem Thome et heredibus suis predictam terram cum pertinenciis per predictum seruicium contra omnes homines in perpetuum. Et pro hac warantia acquietancia defensione fine et concordia idem Thomas dedit predicto Roberto centum solidos sterlingorum unde petit judicium etc.

The replication of Geoffrey and the other demandants, upon which issue was joined, was :—quod per predictum finem ab accione excludi non debent in hac parte quia dicunt quod predicta tenementa cum pertinenciis que ipsi modo petunt et in visu posuerunt etc. non sunt eadem tenementa que continentur in predicto fine sicut predictus Johannes de Scathebury dicit Immo alia tenementa et hoc petunt quod inquiratur per patriam.

The verdict was :—quod quoddam gardinum continens unam rodam terre cum pertinenciis in Paulynescreye de predictis tenementis petitis non continetur in predicto fine sed dicunt quod omnia alia tenementa modo petita in eodem fine continentur.

Note from the Eyre Roll—*continued.*

The judgment was :—quod predictus Galfridus et alii petentes recuperent seisinam suam versus predictum Johannem de Scathebury de predicto gardino excepta tercia parte quarte partis eiusdem gardini eoquod predictus

[1]DETTHYNGGE *v.* BANQUELL.

De ingressu super disseisinam.

Maud qi fust la femme Jon de Dettyng[2] porta bref dentre sur disseisine vers Cecile qi fust la femme Jon de Bacwelle[3] et Thomas son fitz et demanda x. acres de pasture etc. en les qeux [4]mesme ceus C. et T.[5] ne avoient entre[6] si noun par Jon de Bacwelle qi ceus lour lessa qi a tort [7]et saunz jugement[8] disseisi lavantdit Maud.

Malm. son bref suppose qe [9]la femme[9] avoit entre par le baron qe ne peut estre si le lees ne fust fet avant les esposailes [10]et demandoms[10] jugement de bref.

Ingham nous vous dirroms la verite. Jon de Bacwelle morust seisi de cele pasture ensemblement ore autres tenementz apres qi mort Thomas entra com fitz & heir & assentist bien qe Cecile sa miere entrast ceus tenementz[11] & qe ele tint[11] ove lui [12]en comune[12] par mi & par tut[13] come en noun de dower & issint tienent ils en comune & del lees lavantdit Jon [14]par qey[14] nostre bref est[15] asez bon.

Malm. [16]Et nous jugement du bref[16] de peus qe vous conucez bien qe Thomas entra par successioun & ditez qele tient son dower ove lui en comune par son assent ou[17] successioun &[18] dower ne poent estre[19] tenuz en comune [20]Jugment de bref.[20]

Ingham. si vous volez abatre nostre bref il vous covient doner nous bon bref.

Stonore. Jeo vous dorray [21]ij. un en le per & autre en le post[21] le post vers la femme le per vers [22]le heir.[22]

Ingham si nous porteroms nostre bref [23]vers Thomas soul[23] ou vers la femme soul[24] il diroit nous tenoms ceus tenementz en comune [25]ove un tiel nient nome en le bref [26]&c.[27] et abateroit nostre bref[28] &c.[29]

[1] Reported by γ, δ, ϵ, ζ, θ and λ. Text from γ collated with δ, ϵ, ζ and λ. Names of parties from E.R. [2] Detlyngton ϵ ; A. δ ; Dottelingtone ζ ; Kelyngham λ ; Detthyngge E.R. [3] B. δ ; Bankwelle ϵ ; Blakwelle ζ ; Banquell E.R. [4–5] il ζ. [5–6] *from* ϵ ; etc. γ. [7–8] etc. ϵ. [9–9] Maud ζ. [10–10] *from* ϵ. [11–11] λ *omits.* [12–12] ϵ, ζ *omit.* [13] ϵ *adds* ausi. [14–14] Jugement si ζ. [15] ne seit ζ. [16–16] from the other texts ; γ *omits.* [17] en δ. [18] de δ. [19] λ *adds* ensemble ne estre. [20–20] e demandoms jugement δ, ζ ; et demandoms jugement &c. ϵ. [21–21] donqes un bref en le post et un autre en le per ζ. [22–22] Thomas λ. [23–23] soul vers le heir ζ. [24] δ, ζ *omit.* [25–27] λ *omits.* [26–29] Jugement du bref pur quei etc. δ. [27] e demanderoit jugement du bref ϵ ; jugement du bref ζ. [28] ϵ, ζ *add* par quei.

Note from the Eyre Roll—*continued.*

Simon non sequitur. Et Johannes in misericordia et quo ad residuum predictorum tenementorum quod predictus Johannes de Scathebury inde sine die set quod predicti Galfridus et alii nichil capiant per juratam istam set sunt in misericordia pro falso clamore etc.[1]

DETLING *v.* BAKEWELL.

Maud that was wife of John of Detling brought a writ of entry *sur disseisine* against Cecilia that was wife of John of Bakewell and Thomas his son, and demanded ten acres of pasture etc., saying that into these same the aforesaid C. and T. had no entry save by John of Bakewell who leased them to them and who wrongfully and without judgment disseised the aforesaid Maud. Entry *sur disseisine.*

Malmerthorpe. Her writ supposes that as wife she had entered by her husband. But this is not possible unless the lease were granted before marriage; and we ask judgment of the writ.

Ingham. We will tell you the truth. John of Bakewell died seised of this pasture together with other tenements. After his death Thomas entered as son and heir, and willingly agreed that Cecilia his mother should enter these tenements and should hold the whole and every part thereof in common with himself in the name of dower; and so they hold them in common by the lease of the aforesaid John. Consequently our writ is good enough.

Malmerthorpe. And we ask judgment of the writ since you admit that Thomas entered by succession and say that Cecilia holds her dower in common with him by his agreement; and neither succession nor dower can be held in common. Judgment of the writ.

Ingham. If you want to abate our writ you must give us a good one.

Stonore. I will give you two: one in the *per* and one in the *post*—the *post* against the wife and the *per* against the heir.

Ingham. If we were to bring our writ either against Thomas solely or against the wife solely he would say 'we hold these tenements in common with such an one who is not named in the writ etc.,' and he would abate our writ etc.

[1] *m.* 29*d.*

Stonore il conust le contra[1] de son bref qe la ou le bref veut qe Jon de B. lessa[2] a les avantditz Cecile & Thomas il dit [3]qe [4]mesme celui Jon[5] morust seisi & donqes ne lessa il mie &c quod est contrarium &c.

Ingham. Jeo vous mostre qil entra par lui & [6]qe Jon[7] lui lessa &c. qe si Thomas ust aliene les tenementz a un C. & Maud portast son bref vers C. le bref direit in quas C. non habet ingressum nisi per Thomam [8]cui predictus Johannes illas[9] dimisit [10]qui inde injuste[11] &c.[12]

Stonore tut fust son bref bon en droit de T. uncore par mi sa conicance le bref en droit de Cecile est maveys pur ceo qil dit qe T. entra & assigna a C. &c. issint ele entra par lassignement T. [13]& ne mie par le lees Jon. Item[14] il dit qe T.[15] fust seisi del entier & peus assigna &c a tenir en comune ceo ne purra il fere pur ceo qe par mi lassignement la severaunce fust fete.

Ingham nous vous dioms qe ele entra par le lees le baron & [16]ne mie par[16] lassignement Thomas pur ceo qe assignement ne fet[17] mie de gree.

Spigurnel si jeo eye un profit [18]en tonu[19] en une ville jeo peus graunter la terce partie a ma miere [20]en dower[20] & ele maundra son bailif ove mien a prendre[21] checun terce[22] dener & la nous tenoms en comune. Item[23] si jeo eye comune de pasture en une ville jeo purray assigner la terce partie [24]a lui[24] en dower issint qe si jeo maundase ij. boefs ele maundreit le terce & si tenoms en comune. [25]Item[25] si jeo grauntasse a un altre la moite de certeins tenementz qe jeo tienz a tenir ove[26] moy en comune sil fust oste [27]il recovereit[27] par assise.

Stonore en les tenementz qe jeo tienz a terme de ma vye ou en fee homme ne peut aver fraunktenement saunz mutacioun de possessioun par nule suffraunce[28] qe jeo lui peus fere.

Spigurnel pledez autre chose.

Stonore. Jon de Bacwelle ne disseisi point Maud prest &c.

Ingham [29]econtra.[30]

Lenqueste dit qe Jon ne la disseisi point [31]& ideo &c nichil per breve suum &c.[32]

[1] contract δ; ϵ *adds* vie. [2] ζ *adds* les tenemenz; λ *adds* ceus tenemenz. [3]–[5] qil ζ. [4]–[5] les avantdits (*sic*) δ. [6]–[7] qil δ. [7] Johane ζ. [8]–[12] ou J. &c. qui injuste et sine judicio &c. ζ. [9] illos δ. [10]–[11] *from* ϵ. [13]–[15] ζ *omits.* [14] Estre ceo δ, ϵ, λ. [16]–[16] λ *omits.* [17] poet ζ. [18]–[19] de un lieu δ. [19] toulnu ϵ; un commun ζ; tolnu λ. [20]–[20] δ *omits.* [21] demander ζ. [22] δ *adds* au. [23] Estre ceo δ, ϵ, ζ, λ. [24]–[24] δ *omits.* [25]–[25] Auxi qe δ; estre ceo ϵ, ζ, λ. [26] de λ. [27]–[27] qil recoverest vers moi ζ. [28] franc-tenement δ. [29]–[30] Nous voloms averrer qe si &c. δ, ϵ; qe si prest &c. ζ. [29]–[32] Nous voloms averrer qe oil prest etc. λ. [31]–[32] pur quei fut agarde qil ne prist rien par son bref δ; par quei &c. set in misericordia ϵ; par quei fut agarde qel &c. ζ.

Stonore. He admits what is opposed to the statement in his writ, seeing that the writ says that John of B. leased to the aforesaid Cecilia and Thomas, and he says now that this same John died seised; and so he could not have leased etc., which is contrary etc.

Ingham. I show you that [Thomas] entered by [John] and that John leased to him etc., so that if Thomas had alienated the tenements to one C. and Maud were to bring her writ against C. the writ would run: 'Into which C. had no entry save through Thomas to whom the aforesaid John, who unjustly thereof etc., leased them.'

Stonore. Though her writ were good in respect of T., yet, by her admission, it is bad as against Cecilia, for it says that T. entered and assigned to C. etc., so that C. entered by Thomas's assignment, and not by John's lease. Further, it says that T. was seised of the whole, and then assigned etc. to hold in common. But that he could not do, for severance had been effected by the lease.

Ingham. We tell you that Cecilia entered by her husband's lease, and not by Thomas's assignment, because that assignment was not a voluntary one.

Spigurnel J. If I farm the tolls in a town I can grant the third part of them to my mother in dower; and she will send her bailiff to be with mine and to receive every third penny, and we shall hold in common. Again, if I have a common of pasture in a town I can assign to her the third part of it in dower, so that whenever I send two bullocks there she will be entitled to send a third, and so we hold in common. Further, if I grant half of certain tenements to another whom I take to hold with me in common, then, if he be ousted, he can recover by assize.[1]

Stonore. By no consent of mine which I can give him can a man have a freehold in tenements which I hold for the term of my life or in fee without a change of possession.

Spigurnel J. Plead over.

Stonore. John of Bakewell never disseised Maud. Ready etc.

Ingham joined issue.

The jury found that John did not disseise Maud, and so she took nothing by her writ etc.

[1] See note 5 on p. 178 *infra*.

Note from the Eyre Roll.

The Plea upon which issue was joined was :—Cecilia et Thomas . . . bene defendunt quod predictus Johannes non disseisivit predictam Matilldam de predicta pastura cum pertinenciis sicut eadem Matillda dicit.

The Verdict was :—Quod predictus Johannes de Banquelle non disseisivit

[1]BALDWIN *v.* BANQUELLE.

[2]I.

Entre sur disseisine porte vers une femme et soun fuitz ou il furent entrez par le baroun la femme et le heir fut entre com en soun heritage et avoit assigne dower a sa mere a tenir en commune ovesqe ly et fut le bref par taunt challenge et hoc non obstante stetit breve racio pur ceoqe lassignment dil heir est dil dowerment le baron issi lentre par le baron.

Un Robert porta soun bref dentre vers Alice de Banquelle[3] et Johan soun fiz en les queux il ne ount entre si noun par Johan de Banquelle[4] qe atort et saunz jugement diseisi launcestre Robert qi heir il est.

Malm. jugement du bref qe cesti bref voet qe nous navoms entre si noun par Johan etc. la vous dioms nous qe cesti fut baroun Alice et par taunt suppose le bref qe baroun peut lees fere a sa femme et issi il fet degre entre le baroun et sa femme la ou il sount tut en un degree jugement.

Ingham. vous avez demaunde la vewe et cest excepcioun est done naturelment devant la vewe kar par la vewe des tenemenz ne poez par estre ascerte qe Johan fut baroun Alice jugement si a ceste excepcioun puissez ore avenir.

Hervi. ceste excepcioun est purement al actioun par quei respondez.

Ingham. Sire puet estre qe Johan lessa a Alice avant qil la esposa et issi puet il lesser a sa femme, par quei il nous semble qe nostre bref est assez bon.

Hervy. Donqes covient il qe vous pledez a ceo. Et tut put il lesser a sa femme avaunt &c. il ne pout aver lesse a soun fitz &c.

[1] Reported by *a*, *aa*, *β*, *η* and *κ*. [2] Text of (I) from *a* collated with *β*. The note in *β* (and in *aa* with slight variations) is :—Entre sour novele diseisine ou un homme diseisi un autre e devia apres qy mort entra son fiz e asigna a sa mere la terce party dez etc. le heir le diseisi port bref dentre vers le fiz e sa mere e le bref fut chalange en tant qe le bref supposa qe la femme avoit entre par son baron ou baron put my lees fere [a femme *aa*] et demanda jugement du bref e le bref agarde bone. [3] Bacewell *β*. [4] Bakewell *β*.

Note from the Eyre Roll—*continued.*

predictam Matilldam de predicta pastura cum pertinenciis sicut predicta Matillda dicit.

The Judgment was :—Quod predicti Cecilia et Thomas inde sine die et quod predicta Matillda nichil capiat per juratam istam set sit in misericordia pro falso clamore etc.[1]

BALDWIN *v.* BAKEWELL.[2]

I.

Entry *sur disseisine* brought against a woman and her son, where they had entered by the woman's husband. The heir entered as upon his heritage and assigned dower to his mother to hold in common with himself; and the writ was challenged by reason of this, but, notwithstanding, it was held to be good, for the heir had but assigned the endowment by the husband, and so entry was by the husband.

A certain Robert brought his writ of entry against Alice of Bakewell and John her son [demanding certain tenements], into which [he said] they had no entry save by John of Bakewell who wrongfully and without judgment disseised Robert's ancestor, whose heir Robert is.

Malmerthorpe. Judgment of the writ, for this writ alleges that we have no entry save by John etc. Now we tell you that this John was Alice's husband; and your writ supposes that a husband can grant a lease to his wife, which is to make a degree between husband and wife, whereas they are but one person. Judgment.

Ingham. You have demanded a view; and the exception you have taken is one that should naturally be taken before view, for a view of the tenements will not enable you to prove that John was Alice's husband. Judgment whether you are now entitled to uphold this exception.

Staunton J. This exception goes to the root of the action. Therefore answer.

Ingham. Sir, it may be that John leased to Alice before he married her, and in such way he would be able to lease to his wife. Therefore it seems to us that our writ is good enough.

Staunton J. Then you must plead that. And though he might have leased to his wife before etc. he could not have leased to his son etc.

[1] *m.* 56.

[2] This case is probably the same as the preceding one; but as the mother is represented as suing in one case and the son in the other, I have given them separately.

Spig. Seez a un si Johan fut baroun Alice.

Ingham. Nous ne le pooms dedire. Mes nous vous dioms qe cestui Johan soun baroun diseisi nostre ancestre et morust seisi apres qi mort entra Johan soun fiz com heir et assigna a ceste Alice sa mere la moite de ceux tenemenz en dowere a tenir en comune ove lui. Et issi tenent il en comune et sount entrez par Johan si com nostre bref suppose par quei covient qe nous eioms nostre rescoverer par cesti bref ou autrement serroms saunz recoverer.

Stonore. Et nous jugement de sa conisaunce qil ad abbatu soun bref demeygne qil aad conu qe Johan le baroun morust seisi et qe Johan entra apres sa mort come fiz et heir et assigna a Alice en dowerre issi nentra ele paas par Johan soun baroun mes par lassignement Johan soun fiz par quei il pout aver bon bref en le *per* vers le heir et en le *post* etc. vers la femme.

Ingham. Ceo ne pooms paas kar nous ne pooms paas severer la tenaunce kar il tenent en comune.

Hervi vous avez dit qe Alice tient en dowerre et Johan par descente de heritage poount il tenir en comune quaunt dowerre la est assigne.

Fr. coment qe Johan eyt assigne a Alice sa mere dowerre tut est il dil dowement le baroun qest auxi com un lees et per consequent lun et lautre par Johan entre et issi le bref bon en le *per*.

Et a ceo acorda *Malm.*

Stonore etc ne pout avoir dowerre si noun par assignement ou par jugement ou lun ne lautre ne fet degre entre le baroun et sa femme.

[1]II.

Entre sur disseisine.

Un Robert Baldwyne porta un bref dentre sur la novel disseisine vers C. qi fust la femme Johan de Bakewelle et J. son fiz et dit qe eux naueient entre en certeinz tenemenz si noun par J. de Bakewelle qi de ceo a tort lui disseisi etc.

Vewe ou home ne pledra pas en abatement del bref apres la vewe si le plee ne surge su mesme la vewe.

Malm. Jugement du bref qar le bref suppose qe le baroun lessa a sa femme et baroun ne pust a sa femme les faire pur quei etc.

Hingh. Vous auet eu la veue et cest excepcion est abate qar gist naturelment devant la veue qar par la veue ne estres pas encerte le quel le baroun pust lees faire a sa femme ou noun.

[1] Text of (II) from *κ*.

Spigurnel J. Agree amongst yourselves whether John was Alice's husband.

Ingham. We cannot deny it. But we tell you that this John her husband disseised our ancestor and died seised. After his death his son John entered as heir, and assigned the half of the tenements to this Alice, his mother, by way of dower, to hold it in common with him. And they so hold in common and have entered by John, as our writ says. Consequently we ought to be entitled to our recovery by this writ; or otherwise we shall have no recovery.

Stonore. And we ask for judgment because he has abated his own writ by his admission; for he has admitted that John, that was Alice's husband, died seised, and that John entered upon his death as son and heir, and assigned to Alice by way of dower. Alice, consequently, did not enter by John her husband, but by the assignment of John her son. Consequently they can have a good writ against the heir in the *per*, and in the *post* against the woman.

Ingham. That we cannot do, for we cannot separate the tenancy, seeing that they hold in common.

Staunton J. You have said that Alice holds in dower, and that John holds by descent of inheritance. How can they hold in common when dower has been assigned?

Friskeney. Though John has assigned the dower to Alice his mother, yet it is of the endowment of her husband, which is of the nature of a lease; and consequently both one and the other entered by John; and so the writ in the *per* is good.

And *Malmerthorpe* agreed with this.

Stonore. She cannot have dower save either by assignment or judgment where neither the one nor the other makes a degree between the husband and his wife.

II.

Entry *sur disseisine.*

One Robert Baldwin brought a writ of entry *sur la novel desseisine* against C. that was wife of John of Bakewell and John his son, and said that they had no entry into certain tenements but by J. of Bakewell, who wrongfully had disseised him of them etc.

A tenant cannot after view plead in abatement of the writ unless his plea be based upon the view.

Malmerthorpe. Judgment of the writ; for the writ supposes that the husband leased to his wife, and a husband cannot grant a lease to his wife; wherefore etc.

Ingham. You have had view, and your exception is abated; for it is one which from its nature should be taken before view, for a view will not tell you whether a husband has granted a lease to his wife or not.

Hervy Ceo nest pas a la forme du bref mes tut al matire qar il vous [dit] qe vous dusset auer bref hors de degres vers la femme et en degres vers le fiz.

Hingh. Sire nous ne poms pas seuerir la demande qar il tynent en commun qar le fiz assigna sa mere la moite saunz faire la seueraunce pur quoi etc.

Hervy. Vous dites vostre talent qe ne pust estre entendu qe heir tigne en commun le heritage oue le douer sa mere nec econtra.

Hingh. Tiel est le cas.

Frisk. Dit qe le dowement le baroun fist un lees vel quasi pur quoi le bref en le degre fust bon vers la femme.

Et a ceo acorderent *Caunt* et *Malm.*

Dower Quere si la femme en dower tiend en commen oue le heire. Nota qe non causa patet infra tamen quere.

Stanh. dit quele nauoit pas dowere tut par le dowement soun baroun mes auoit par lassignement le heir qi ne fait nient degree pur quoi bref de degree ne gist point vers lui et dit outre qele ne puet dowere auer si noun par jugement ou par assignement ou lun ne lautre ne fait degree.

Postea stetit per iudicium.

[1]III.

Un Willem porta son bref de entre fundu sur la novel disseisine vers Margerie qi fut la feme Johan de Bacwell et Thomas son fiz et demanda certein tenemenz en les queus il naueint entre sinon par Johan de Bacwelle qi ceo lour lessa qi a tort et sanz jugement disseisi lavantdit W. etc.

Stonore. Meme ceti M. a qi vous supposet qe Johan de Bacwelle dust auer lesse fut la femme ceti Johan qi ne put lees fere a sa feme jugement de bref.

Spig. Put estre qe le lees se fit avant les esposailes.

Stonore. Si le fet seit tel il purra dire en meintenant son bref.

Ingh. Johan de Bacwelle mourust seisi en son demene com de fee apres qi mort entra Thomas com fiz et heir et assigna a Margerie sa mere la moite en noun de dower a tenir oue ly en comune par mi et par tot et issi sont il entre par Johan ou nous ne poums altre bref aver jugement si cet bref etc. et qant a ceo qe vous parletz de les ceo est suire de la

[1] Text of (III) from η.

Staunton J. The exception does not go to the mere form of the writ but to the root of it; for he tells you that you cannot have this writ against the wife and son jointly, seeing that there is no degree between husband and wife while there is between the husband and his son.

Ingham. Sir, we cannot sever our demands, for they hold in common, as the son assigned an undivided moiety to his mother; consequently etc.

Staunton J. You are talking wildly. I cannot understand either how the heir can hold in common with his mother the heritage and his mother's dower, or, conversely, that his mother can hold jointly with him.

Ingham. Such is the case.

Friskeney contended that the husband's endowment constituted a lease or a quasi-lease, rendering the writ in degree good as against the wife.

And this was supported by *Cambridge* and *Malmerthorpe.*

Stanhope said the wife got not her dower wholly by the endowment of her husband, but by the assignment of the heir, which brings in no question of degree; and consequently a writ of degree lies not against him. And he said further that she could not have dower but by judgment or assignment, and neither the one nor the other of these was a matter of degree.

Then the matter stood over for judgment.

Dower. Question whether the wife holds her dower in common with the heir. Held that she does not, for reasons here given. But this is questionable.

III.

One William brought his writ of entry founded upon novel disseisin against Margery that was wife of John of Bakewell and Thomas his son, and demanded certain tenements into which they had no entry but by John of Bakewell who leased them to them, and who wrongfully and without judgment had disseised the aforesaid William etc.

Stonore. This same M. to whom you say that John of Bakewell granted a lease was this same John's wife, and a man cannot grant a lease to his wife. Judgment of the writ.

Spigurnel J. Maybe the lease was granted before marriage.

Stonore. If the fact be such he can state it in supporting his writ.

Ingham. John of Bakewell died seised in his own demesne as of fee. After his death Thomas entered as son and heir, and assigned the moiety to his mother, Margery, in the name of dower to hold as an undivided parcel with him; and so they have entered by John, else there is no other writ we can bring against them. Judgment whether this writ etc. And as to what you say about the lease,

chauncelerie qe ne aliance point bref ausicom en cas si le pere mey disseise et deuie seisi apres qi mort le fiz entre et aliene a un estranger ieo auerai bon bref vers le estranger a dire en les qeus il nad entre sinon par le fiz a qi le pere lessa etc. et si entre le fiz par succession et le bref meintenable pley ausi par desa etc.

Stonore. Par vostre bref supposez vous qe Margerie et Thomas tenent en comune et ore auet conu qe Margerie tient la moite en dower par assignement Thomas qi est suppose a sa mere a tener ou ly en comune et prendre la moite de profit ou ly par mi par tot ore en cas de comune de pasture tonnu de marche le heir purra assigner dower a comuner ou la terce beste et a prendre la terce dener de tonnu et depus qil dient qe Thomas entra par Johan son pere qi assigna dower a Margerie sa mere etc. le qel assignement ne fet pas de gre et issi ensut qil entrerent par Johan ou il ne put altre bref aver.

[Spig.][1] Il semble qe cet bref est bon mes altre serreit si la feme ust recoueri son dower par jugement.

Stonore. De comune pasture et de tonnu de marche qe ne pount estre severes en cel cas il put assigner dower a tener en comune mes il semble qe altre est de chose qe chet en demene qe put estre parti.

Spig. Ieo pose qe ieo sey seisi de une carucee de terre et vous enfeffe de la meite a tener ou moi en comune et vous soefre entrer et tener ou mei en comune, vostre estat est assez bon qe tot ne seit ceo soefrable en court hors de court vous le poet fere.

Stonore. De vostre terre sanz ceo qe vous demeiset me semble pas qe vous pussez estat fere a altre qar tot tens estes vous seisi de lenter.

Spig. Si ieo vous face tel estat et vous soeffre continer vostre seisine ou moy si ieo vous ouste vous aueret bien lassise.

[1] See note 3–4 on opposite page.

[1]the writ was issued by the Chancery which suggested no other to us.[2] And just as if a father disseise me and die seised, and then, after his death, the son enter and alienate to a stranger, I shall have a good writ against the stranger if I allege that he had no entry but by the son, to whom the father leased etc., and as similarly if the son enter by succession I can support my action by such a writ, so here etc.

Stonore. In your writ you allege that Margery and Thomas hold in common, and now you admit that Margery holds a moiety in dower by the assignment of Thomas, who is alleged by you to hold in common with his mother and to take a moiety of the profits of the whole undivided estate. Now in case of common of pasture or of market tolls the heir may assign by way of dower the right of pasturing the third beast or of taking the third toll-penny; and since they say that Thomas, who assigned to Margery his mother etc.—such assignment not being a voluntary one—entered by John his father, it follows that [both Thomas and his mother] entered by John, and they cannot have any other writ [than this one].

[3]SPIGURNEL J. This writ appears to be good, but it would be otherwise if the wife had recovered her dower by judgment.[4]

Stonore. In the case of common of pasture and market-tolls, things which are not partible, dower may be assigned; the whole being held in common; but it seems to be otherwise in the case of demesne land which is partible.

SPIGURNEL J. Suppose I am seised of a plough-land and enfeoff you of a moiety of it to be holden in common with me, and allow you to enter and hold in common with me, you have got a sufficiently good estate; for though your title would not be recognised in a court of law, yet outside the Court you may give effect to [a title which the Court cannot recognize].[5]

Stonore. It seems to me that you cannot grant an estate in your land to another person unless you grant an actual parcel of it, for otherwise you still remain seised of the whole.

SPIGURNEL J. If I give you such an estate and allow you to have seisin in common with myself, then, if I oust you, you will get your assize [of novel disseisin].

[1–2] The text is obscure, but the translation given above probably conveys the meaning of it.

[3–4] The reporter makes this part of *Stonore's* speech, but it must have come from the judge.

[5] The text is not very plain, but this seems to be the meaning of SPIGURNEL J.'s remarks. He appears to be distinguishing between title and possession. A tenant could not enfeoff another to hold jointly with himself. To bring about this state of affairs he must first alienate to a third party, who could then enfeoff the other two as joint-tenants. Still the Court, according to SPIGURNEL'S following dictum, would protect the technically irregular possessor by the assize of novel disseisin.

[1]LE FEURE *v.* BROKHELLE.

De ingressu super disseisinam.

Jon le fitz Rogger le Feure[2] & Adam & Symond ses freres portent bref dentre sur disseisine vers Willem[3] [4]de Brokhulle[4] & demandent j. mies &c en C. en les quex [5]il ne avoit entre[5] si noun par Osbern[6] de W.[7] qi [8]ceo lui lessa qi a tort [9]& saunz jugement[10] disseisi[11] la[12] miere les demandants.[13]

Westcote [14]defend &c[15] Sire iij.[16] portent cest bref & les ij. sount denz age & [17]ne poent nul homme avower. Jugement sils serrount receus.[18]

Cant statut nous eidera qar nostre miere morust en pledant par qey il covent qe nous seoms receus[19] &c.

Hervi ly chacea a dire qel bref ele porta & ou &c.

Cant ele porta bref dentre[20] sur[21] disseizin vers vous mesme en baunk.

Pas. vous nestes mie en cas de statut si vous ne diez qele porta la novel disseisine & morust enpledant.

Et [22]a ceo fust lestatut regarde qe a ceo se acorda.[22]

Westcote. Sire ele porta un bref mes le play fust descontinue ij. aunz avant sa mort mes nous ne voloms mie pleder par la mes nous vochoms [23]a garantir par Eyde[24] &c Jon de B. & M.[25] sa femme Robert[26] & J.[27] sa femme E. C. & D. fitz & heir F. & Jon le fitz Roger le Feure[28] Adam & Simond[29] ses freres qi sount demandantz &c des queux [30]E. C. D. & J.[30] sount denz age.

Cant vous avez vouche &c [31]les heirs[31] disseisor & estatut veut qe le plee ne soit delaie par le noun age les heirs dune part ne dautre.

Pas. [32]vous nestes mye en cas de statut qar[32] lestatut ne parle mie qant il sount vouche mes qant il portent bref ou bref soit porte vers eux mes ceo bref est porte vers celi qe entra par Osbern[33] qest tut estraunge a les vouches.

Malm. il semble[34] qe ceo play ne doit nient plus targer par voucher les heirs le disseisor qil ne targe si eux mesme [35]feusent tenantz mes si ceus qi sount voches fusent tenantz [36]le plee[37] ne targereit mie par lour nounage.[38]

[1] Reported by γ, δ, ϵ, ζ, λ. Text from γ collated with the others. Names of parties from E.R. [2] Ferrour δ. [3] W. le fitz W. ζ, λ. [4–4] le fitz B. δ. [5–5] from ϵ ; &c. γ. [6] Osbert δ. [6–7] B. δ, λ ; C. ϵ ; ζ *omits.* [8–13] disseisi Maud mere &c. ζ. [9–10] &c. ϵ. [9–11] etc. Maud λ. [12] Maude δ. [14–15] *from* ϵ. [14–16] les iij parcenees qi ζ. [17–18] ceo est un bref de droit a qi il ne pount estre parties et demandoms jugement du bref ζ. [18] respondu a tel bref ϵ. [19] respondu ϵ. [20] fondu δ, ϵ, ζ. [21] ζ *adds* la novel. [22–22] lestatut fut regarde et acorda a son dit ζ. [23–24] *from* ϵ. [24–29] etc. A. B. C. D. E. et F. fitz et H. G. et J. le Feure A. et S. λ. [25] Emme ζ. [26] R. de K. δ. [27] R. de S. et Is. ζ. [28] Ferrour δ. [30–30] A. B. et C. λ. [31–31] le heir λ. [32–32] *from* ϵ. [33] Osbert δ. [34] ϵ *adds* a nous. [35–37] λ *omits.* [36–38] donqes serreit il en cas destatut et la serrunt il a la lei especiale pur quei vostre bref ne sesteut pas δ.

LEFEVRE *v.* BROCKWELL.

Entry *sur disseisine.*

John the son of Roger Lefevre and Adam and Simon his brothers bring a writ of entry *sur disseisine* against William of Brockwell, and demand a messuage etc. in C., into which he had no entry save by Osbert of W. who leased it to him, and who had wrongfully and in absence of judgment disseised the mother of the demandants.

Westcote defends etc. Sir, there be three who bring this action, and two of them are under age and cannot vouch anyone. Judgment whether these should be received.

Cambridge. The Statute[1] will help us, for our mother purchased a writ before she died ; and so we ought to be received, etc.

Staunton J. drove him to say what writ she brought and where etc.

Cambridge. She brought a writ of entry *sur disseisine* against yourself in Bank.

Passeley. You do not come within the Statute unless you say that she brought a writ of novel disseisin and died after action commenced.

The Statute was read and agreed with what *Passeley* said.

Westcote. Sir, she brought a writ, but the action was discontinued two years before her death. But we do not wish to put that in by way of answer, but vouch to warranty by aid etc. John of B. and M. his wife, Robert and J. his wife, E., C., and D. that is the son and heir of F., and John the son of Roger Lefevre, and Adam and Simon his brothers, who are the demandants etc. and of these E., C., D. and J. are under age.

Cambridge. You have vouched etc. the heirs of the disseisor, and the Statute says that the action shall not be delayed by the infancy of the heirs either on one side or the other.

Passeley. You do not come under the Statute. The Statute does not refer to heirs that are vouched, but to heirs who bring a writ, or against whom a writ is brought. Now this writ is brought against him that entered by Osbert, who is a complete stranger to the vouchees.

Malmerthorpe. It seems to us that this action should not be delayed through the vouching of the heirs of the disseisor, for it would not be delayed if they were the tenants. Where those who are vouched are tenants it is not to be delayed by reason of their infancy.

[1] *Sc.* Statute of Westminster I, cap. xlvii.

[1]*Fris* le vocher est done a la comune ley [2]ou il covent doner proces a[3] la comune ley[4] mes sils fusent tenantz donqes serroient ils en cas de statut [5]& la serreient il a la ley especiale par qey vostre response ne se tient[6] pas.[7]

Spigurnel a *Cant* en taunt com vous portez cesti bref dentre [8]vous lour donez voye[9] de[10] voucher donqes a toler empledant[11] ceo qe vous lur avez done par vostre purchas serroit fort[12] & la ou vous lour avez done le voucher vous lour donez delais [13]& proces[14] a la comune ley.

Stonore il covent graunter cest vocher & qant les vouchez vendrount [15]soit le toil[16] entre eus.

Fris[17] sil grauntent le voucher les vochez averount lour age.

Malm[18] pur ceo demoroms en voz agards del houre qe le plee ne targereyt mie par lour nounage sil fusent tenantz si par le vocher de mesme ceus deyve targer &c.

Spigurnel[19] soiez primes a un si les vochez soient de age ou de denz age qar sil soient denz age il ne poent nule sommounce receiver par qey &c.

Stonh La resoun pur qey il voche les demandantz si est pur ceo qil iad autres heirs &c mes si ne fusent autres heirs fors le demandantz il les barreit par voye dexcepcion &c.

Et a ceo acorda la court.

Note from the Eyre Roll.

The claim was :—Johannes filius Rogeri le Feure et Adam et Willelmus fratres ejusdem Johannis per custodem suum petunt versus Willelmum filium Willelmi de Brokhelle unam acram prati et tres rodas bosci cum pertinenciis in parva Chert ut jus et hereditatem suam et in quas idem Willelmus non habet ingressum nisi per Osbertum de Plukele qui illas ei dimisit qui inde injuste etc. disseisivit Isabellam que fuit uxor Rogeri le Feure matrem predictorum Johannis Ade et Willelmi fratris ejusdem Johannis cujus heredes ipsi sunt post primam etc.

[1–7] δ *omits.* [2–4] ζ, λ *omit.* [3] solom ϵ. [5–7] λ *omits.* [6] lie ζ. [8–10] vers li vous li devez ζ. [9] veue λ. [11] lur en pledaunt ϵ. [12] encontrere λ ; ζ *adds* chose. [12–14] qar la ou vous les devez voucher vous li devez processe ζ. [13–14] δ *omits.* [15–16] seit ceo tolle ζ. [16] debat λ. [17] *Malm.* λ. [18] *Frisk* λ. [19] *from here to end* δ *and* ζ *read* : Estoys le voucher. Et viconte fetes somoundre les enfantz com sil fuissent de plein age et donqe seit le toylle quant il serrunt venuz en court entre eux et les demandantz. *To this* ζ *adds* : Hervy. home ne put mie sommoundre celi qi est denz age et le nounage est conu dune parte et dautre. *Malm.* il sunt hors de cas de statut tanqe com le tenant nest pas heir le disseisor et en tant com launcestre porta bref dentre sur la disseisine ou statut voet qe dust porter lassise en tant sont hors de statut &c. *From here to end* λ *reads* : Estoise le voucher et Visconte fetes sumundre les enfantz com il fusent de plein age, et donqe seit le toil qant il serrunt venuz entre euz et les demandanz etc.

Friskeney. The voucher is given by the common law, and so the proceedings ought to be governed by the common law. It is only in the case of their being tenants that they would come under the Statute, and so within the provisions of a special law. Consequently your answer is no answer.

Spigurnel J. to *Cambridge.* By the very fact of your bringing this writ of entry you entitle them to vouch. To deprive them now, in supporting your writ, of that which you yourself gave them by the purchase of your writ would be hard dealing. Since you have granted them the right of vouching, you have also granted them the right to delay and to a procedure under the common law.

Stonore. They ought to allow this voucher; and then when the vouchees come they can fight it out amongst themselves.

Friskeney. If the voucher be allowed, then the vouchees will be entitled to their age.

Malmerthorpe. Then we await your ruling whether, seeing that the action would not be delayed by reason of the infancy of the heirs if they were tenants, it ought to be delayed because they are vouchees.

Spigurnel J. First of all agree amongst yourselves whether the vouchees be of full age or be under age; for if they be under age they cannot receive a summons, and consequently etc.

Stonore. The reason why he vouches the demandants is because there are other heirs etc. If there were no other heirs except the demandants, he could bar them by means of an exception etc.

And with this the Court agreed.

Note from the Eyre Roll—*continued.*

William Brockwell vouches to warranty ' Willelmum filium Willelmi de Herst Thomam de Erundale et Agatham uxorem ejus Stephanum Bate et Godelevam uxorem ejus qui sunt plene etatis et Robertum et Ricardum filios Guidonis de Smerdenne Johannem filium Rogeri le Feure Adam et Willelmum fratres ejusdem Johannis qui sunt infra etatem etc.[1]

And here the record breaks off. A long blank space that has never been filled follows.

[1] *m.* 83*d.*

[1]CHITCHE *v.* LEYCESTRE.

[2]I.

Johan Chiche porta son bref dentrie sur disseisine vers Cristine qi fust la feille Roger de Leicestre e dit en les queux ele nad entre sinon par Roger de Leircester a qi Estevene Chiche ceux tenements lessa qi a tort &c disseisi lavantdit John &c.

Cant. La ou le bref suppose qe Roger entre par Esteven soul qi a tort &c disseisi John nous vous dioms qe Roger entra par Esteven e par John prest &c.

Westcote vostre response est double saver al entre e de bref abater en tant come vous dites qe vous entrastes par John qi suppose par son purchace quil fuit disseise par quei tenet vous a lun ou a lautre.

Cant. Roger [entra par] Esteven & par John prest &c.

Westcote Esteven disseisi John et Roger entra par Esteven auxi come nostre bref suppose prest &c.

Lenquest dit qe lentier de ceux tenementz furent auscun temps en la seisine un Willeam Chiche qi avoit ij. fuis un Hugh e Esteven qi entrerent apres le dites Willeam come fuis & heirs par ceo qe les tenementz sont partables & tindrent en comun tote la vie Hughe. Hughe mort John entra com fuis e heire e tient ove Esteven en comune e pur ceo qil fut deinz age il le tient com en en (*sic*) sa garde par reson de nurtur. Esteven procura qe John qi fust en sa garde denz lage de viii. ans de enfeoffer Roger avantdit de leur terre qil tindreit en comune et issi le firent & prioms vous eides.

Stauntone dunqes poez vous savement dire en tant come Johan fust deins lage de viii. ans qe ne savet son proffitt conuster et en tant com il fust en la garde Esteven qe ce nest pas le fait John eins est le fait Esteven e per tant enseut qe Esteven disseisi John.

E per avvis des Justices il disoient qe ceo fust tut le fait Esteven par quei agarde fust qe John recoversist sa pur partie &c. Et *Nota* qe dit fust en cest pled qe si garde pregne feffement dacun denz age en sa garde qil est disseisor par la rescreit e sil soit trove par assise il sera agarde a la prison.

[1] Reported by *a*, *δ*, *ζ*, *θ* and λ. Names of the parties from E.R. [2] Text of (I) from *θ*.

CHICHE *v.* LEICESTER.

I.

John Chiche brought his writ of entry *sur disseisine* against Christina that was daughter of Roger of Leicester, saying that Christina had no entry into [the tenements claimed] but by Roger of Leicester to whom Stephen Chiche, who had wrongfully etc. disseised the aforenamed John etc., had leased them.

Cambridge. Whereas your writ supposes that Roger had entry by Stephen alone who wrongfully etc. disseised John, we tell you that Roger entered by Stephen and by John. Ready etc.

Westcote. Your answer is double, that is to say it goes both to the entry and to the abatement of the writ, inasmuch as you say that you entered by John; and John, by his writ, alleges that he was disseised. Consequently you must abide by one answer or the other.

Cambridge. Roger entered by Stephen and by John. Ready etc.

Westcote. Stephen disseised John, and Roger entered by Stephen, as our writ alleges. Ready etc.

The inquest found that the whole of the tenements in issue were at one time in the seisin of one William Chiche. William had two sons, Hugh and Stephen, who entered in succession to the said William as his sons and heirs because the lands are partible, and they held in common during the whole of Hugh's lifetime. When Hugh died, John entered as his son and heir, and held in common with Stephen; and because John was under age, Stephen managed the land, it being in his wardship by reason of nurture. Stephen procured John, who was in his guardianship and under the age of eight years, to enfeoff the aforesaid Roger of their land to be held in common [with Stephen]; and so it was done, and we pray your aid.

Staunton J. Then you may fairly say that as John was under the age of eight years he was unable to judge what was for his own advantage; and, inasmuch as he was in Stephen's guardianship, his deed was really not his own deed but Stephen's; and so it follows that Stephen disseised John.

And by the instruction of the Justices the inquest found that the deed was Stephen's deed; wherefore it was adjudged that John should recover his share etc. And note that it was said in this case that if a guardian should take feoffment of one under age that was in his wardship he became a disseisor by such taking; and that if the facts were so found by an assize he would be committed to prison.

Note from the Eyre Roll.

The writ was brought against two sisters, Christina and Alice.

Christina et Alicia per custodem suum veniunt et defendunt jus suum et bene defendunt quod predictus Stephanus non disseisivit predictum Johannem filium Hugonis de predictis tenementis cum pertinenciis sicut idem Johannes dicit. Et de hoc ponunt se super patriam.

The Verdict was :—quod predicta duo messuagia aliquo tempore fuerunt in seisina cujusdam Johannis Chitche qui inde olim seisitus in dominico suo ut de feodo post cujus mortem intraverunt in eisdem predicti Hugo et Stephanus ut filii et heredes ipsius Johannis et illa tenuerunt conjunctim

[1]II.

Entre sur disseisine ou le gardein en sokage et lenfaunt deinz age lesseront iointement et non obstante fut agarde une disseisine pur le le noun age lenfaunt.

Johan le fiz Hugh Cuth et autres porterent bref dentre uers Johan le fiz Roger de Leycestre les autres ne vindrent point par quei il furent somounz a suyre et ne vindrent point et furent seuerez et Johan soul respoundy et voleit le bref en les queux mesmes cestui Johan le fuitz Rogger nad entre si noun par Roger de Leycestre a qy Esteuene Cuth lessa qe a tort et saunz jugement disseisi lauauntdit Johan Cuth puis la terme etc.

Caunt. Il ne lui disseisi point prest etc.

Wescote. Sire cestui Johan qe porte cestui bref fut de deinz age et en la garde Esteuene com plus prochein amy par resoun de nurture et cesti Esteuene lessa les tenemenz etc. a Roger de Leycestre etc. et issi lui disseisi prest etc.

Et les autres qil ne lui disseisi point prest etc.

Ideo Juratores (*sic*) qui dicunt qe les tenemenz furent en asqun temps en la saisine vn Johan Couth qe aueit .ij. fiz Esteuene et Hugh qentrerent ceux tenemenz apres la mort Johan pur ceo qe les tenemenz sunt departables et tindrent les tenemenz en comune Hugh prist femme engendra cesti Johan qe ore porte cestui bref Hugh morust seisi et cestui Johan entra com fitz et tint ou Esteuene en la manere qe soun pere tint Estueene et cesti Johan lesserent en semble a cestui Roger.

Spigurnel. De quel age fut Johan adonqes ?

[1] Text of (II) from *a*.

Note from the Eyre Roll—*continued.*

tota vita predicti Hugonis. Et dicunt quod post mortem ipsius Hugonis predictus Johannes filius Hugonis qui modo petit etc. intravit tenementa illa et illa tenuit conjunctim simul cum predicto Stephano ut filius et heres predicti Hugonis. Et dicunt quod predictus Stephanus postea ipsum Johannem filium Hugonis de medietate predictorum messuagiorum injuste etc. disseisivit.

The Judgment was :—quod predictus Johannes filius Hugonis recuperet seisinam suam versus predictas Cristinam et Aliciam de medietate predictorum messuagiorum cum pertinenciis et Christina et Alicia in misericordia etc.[1]

II.

Entry *sur disseisine* where the guardian in socage and an infant under age leased jointly; and yet, by reason of the nonage of the infant, it was adjudged a disseisin.

John the son of Hugh Cuth and others brought a writ of entry against John the son of Roger of Leicester [and others]. These others did not appear. They were therefore summoned to answer, but did not appear and were thereupon struck out, and John alone answered. The writ alleged that the said John the son of Roger had no entry into the tenements but by Roger of Leicester to whom Stephen Cuth had leased them, which Stephen had wrongfully and without judgment disseised the aforesaid John Cuth since the term etc.

Cambridge. He did not disseise him. Ready etc.

Westcote. Sir, this John that brings this writ was under age and in the guardianship of Stephen, as being his nearest friend, for reason of nurture[2]; and this Stephen leased the tenements etc. to Roger of Leicester etc., and thereby disseised John Cuth. Ready etc.

And the others said that he did not disseise him. Ready etc.

So a Jury was called that said that at a certain time the tenements were in the seisin of John Cuth; and that John had two sons, Stephen and Hugh, who entered upon these tenements upon the death of John, for the tenements were partible, and held them in common. Hugh took a wife and begat this John that now brings this writ. Hugh died seised, and this same John entered as his son, and held in common with Stephen as his father had done. Stephen and this same John leased jointly to the aforenamed Roger.

Spigurnel J. How old was John at that time?

[1] *m.* 59*d.*

[2] This does not answer the later technical definition of guardianship by nurture, which was confined, it is said, to the father or mother.—Co. Lit. 88*b* and Butler's note.

Juratores. Dil age de .xiiij. aunz.

SPIGURNEL demaunda le quel le fet fut fet Esteuene et Johan ou le fet Esteuene soul.

Juratores. Nous vous avoms dit la verite et prioms votz auisemenz.

HERVI. Il vous couient dire.

Et hoc dixit qe si lenfaunt de deinz age et en garde eust mesmes aliene tut fut soun gardein ioint par taunt ne fut paas le gardein disseisour mes si le gardein eust aliene il fut disseisour.

Juratores. Il nous semble qe tut fut le fet Esteuene pur ceo qe Johan fut de deinz age.

SPIGURNEL. Auxi semble a nous qe tut soit ceo qe lenfaunt plaunte son seal par labbet soun gardein il ne pout conustre bien ne mal ne ne pout estre dit soun fet kar il puet mesmes reentrer taunt coom il soit de deinz age de .xxj. an. et pur ceo agarde ceste court qil recouere sa saisine saver de ceo qe a lui affiert a sa purpartie etc.

[1]III.

Entre foundre sur nouel disseisine.

En un bref dentre [2]foundu sur[3] disseisine[4] troue fut par enqueste qe les tenemenz qe furent en demande furent en la seisine un [5]R. et E.[5] qe furent freres qe ceux tenemenz tindrent iointement R. morust Johan qe port cesti bref fut son fitz et son heir et entra en leritage son pere et tynt iointement oue E. son oncle et fut en sa garde pus la volunte pris[6] a E. de aliener [7]tut lenter[8] a un J.[9] par ceux qe[10] sunt tenantz et procura Johan qil aliena oue ly sa pourpartie et qil asseleroit[11] le fait oue E.[12] et il issi fesoit et vous dioms qil estoit adonqe en la garde [13]et coment il procura a mettre seal au fait et nestoit si noun[14] de[15] xiiij. anz.

[16]STANTONE. Depus qe J. fut adonqe deinz age et en la garde E. coment qil ly procura a mettre le seal au fet tut fut le fait E.

Lenqueste dit qe oyl.[16]

STANTONE. Assetz disseisi [17]E. J. par cel[18] qil ly fesoit fere[19] tanqe il fut deinz age et en sa garde et sil[20] fut ici il irra a la prisone pur quei agarde la court qe J. recouere la moyte [21]de la terre aliene.[21]

[1] Text of (III) from ∂ collated with ζ and λ. [2–4] ζ *omits.* [3] λ *adds* la nouvel. [5–5] Richard et Esteven ζ; R. et Esteuene λ. [6] prist ζ. [7–8] la terre λ. [8] la terre ζ. [9] Jon pere le tenant λ. [9–12] λ *omits.* [10] ζ *adds* ore. [11] enselereit ζ. [13–14] Esteuene et del age λ. [13–15] E. et si ne fut il fors qe ζ. [16–16] λ *omits.* [17–18] et Jon tant λ. [18] ceo ζ. [19] ζ *adds* le fet. [20] si Esteven ζ; si E. λ. [21–21] des tenementz alienez ζ.

The Jury. Fourteen years old.

Spigurnel J. asked whether the deed was the deed of Stephen and John or of Stephen only.

The Jury. We have told you the truth, and we pray your consideration of it.

Staunton J. They ought to give you a particular answer.

And this he said because if the infant, being within age and a ward, had alienated, even though jointly with his guardian, the guardian would have been no disseisor; but if the guardian [alone] had alienated he would have been a disseisor.

The Jury. We think that the deed was the deed of Stephen only, for John was under age.

Spigurnel J. We are of the same opinion; for even though the infant, by the advice of his guardian, affixed his seal, he was incapable of recognising what was for his advantage or disadvantage, and this cannot be said to be his deed, for he may re-enter while he is under the age of twenty-one years. And therefore this Court gives judgment that he recover his seisin, that is to say, of that which accrued to him as his share.

III.

Entry upon novel disseisin.

In a writ of entry founded upon a disseisin the jury found that the tenements in demand were in the seisin of one R. and S. that were brothers, who held the said tenements jointly. R. died. John that brings this writ was his son and heir. He entered upon his father's heritage and held jointly with S. his uncle, who was his guardian. Subsequently S. was desirous that the tenants should alienate the whole property to one J., and he procured John to join with him and to alienate his own share, and to seal the deed together with him. And John did this. And we tell you that he was then in wardship. And though S. procured that John should affix his seal to the deed he was then only fourteen years of age.

Staunton J. Seeing that J. was then under age and was in ward of S., the deed was entirely the deed of S., notwithstanding that he procured John to affix his seal to it.

The inquest said that so it was.

Staunton J. S. did in fact disseise J. by what he made him do while he was under age and in his guardianship; and if he were here we would send him to gaol. Wherefore the Court gives judgment that J. recover the half of the land alienated.

[1]CHICHE *v.* LEYCESTER.

Entre sur disseisine sur mesmes les persones et de mesme lentre mes dautres tenemenz et agarde fut qil ne prist rien etc. et uncore lenqueste dit mesmes le verdyt qe auaunt est dit mes racione pur ceo qe en lautre bref il plederent sur la disseisine et en cesti bref sur le lees et tout fut il deinz age il lessa et hec est racio diuersa.

Meisme cestui Johan Cuth porta au tiel bref uers Johan le fitz Roger des autres tenemenz et de mesme lentre.

Caunt. La ou soun bref voet qe nous nauoms entre si noun per Roger a qy Estuene lessa qe a tort etc. nous vous dioms qe Esteuene ne lessa paas soul a Roger einz Esteuene et Johan prest etc.

Et hoc dixit pur ceo qe le fet qil auoit de Johan et de Esteuene cherreit plus en euidence dil enqueste en ceste manere qe en lautre.

Wescote. Tut fut le fet Esteuene.

Caunt. Si lessa de deinz age comme lei lui doune soun rescouerir par le *dum fuit infra etatem* jugement.

Lenqueste dit a cel verdit com desus est dit qe Esteuene et Johan lesserent et Johan dil age de xiiij. aunz.

Spigurnel. En lautre bref il plederent sur la disseisine et a cestui bref il ount plede sur le lees et coment qe Johan fut de deinz age il lessa et pur ceo agarde cestui court qil ne preigne rien par cesti bref etc. mes soit en la mercy etc.

Note from the Eyre Roll.

The hearing was commenced at Westminster. The answer there of John the son of Roger was :—quod predictus Rogerus pater suus obiit seisitus de predictis tenementis cum aliis tenementis in dominico suo ut de feodo post cujus mortem idem Johannes filius Rogeri et quidam Johannes et Ricardus fratres ipsius Johannis intraverunt in tenementis illis ut filii et heredes ipsius Rogeri et tenementa illa inter se participaverunt etc. unde dicit quod ipse tenet predicta tenementa modo petita in proparte etc. simul cum predictis Johanne et Ricardo participibus suis sine quibus non potuit eis inde respondere.

John and Richard are summoned, but Richard makes default. Thereupon John is ordered by the Court to answer alone. His Plea (in Eyre) is :—quod non debet ei inde ad hoc breve respondere. Dicit enim quod predictus Stephanus solus non dimisit predicto Rogero predicta tenementa. Immo idem Stephanus et Johannes filius Hugonis Chiche conjunctim dimiserunt predicto Rogero predicta tenementa etc. et petit judicium de brevi.

[1] Reported by *a* only.

CHICHE *v.* LEICESTER.

Entry *sur disseisin* between the same parties and on the same entry, but in respect of other tenements, where the Court ruled that the demandant take naught etc. though the finding of the jury was the same as in the previous case. And this was so because under the other writ the pleadings concerned themselves with the disseisin, but under this writ with the lease. And the demandant leased though he was under age. And the argument here ran upon different lines.

This same John Cuth brought a similar suit against John the son of Roger upon the same entry but in respect of other tenements.

Cambridge. Whereas his writ says that we have no entry but by Roger to whom Stephen, that wrongfully etc. leased, we tell you that Stephen did not solely lease to Roger, but Stephen and John [jointly]. Ready etc.

And he said this in order that the deed of John and Stephen which he produced should be brought more prominently to the jury's consideration than in the previous case.

Westcote. The deed was entirely Stephen's.

Cambridge. If he leased under age the law gives him a recovery by a *dum fuit infra etatem.* Judgment.

The jury returned the same finding as in the previous case, namely that Stephen and John leased, and that John was of the age of fourteen years.

Spigurnel J. Under the other writ the pleadings turned upon the disseisin; under this writ they turn upon the lease. And John did in fact lease, though he was under age. And therefore this Court gives judgment that he take nothing by this writ etc. but be in mercy etc.

Note from the Eyre Roll—*continued.*

The Replication upon which issue was joined was:—Johannes filius Hugonis dicit quod predictus Stephanus solus dimisit predicto Rogero predicta tenementa sicut per breve suum supponit.

The Verdict was:—quod predicti Stephanus Chiche et Hugo frater ejus fuerunt seisiti de predictis tenementis in communi ut participes et coheredes eo quod tenementa illa sunt de tenura de Gavelykynde qui quidem Hugo obiit post cujus mortem predictus Johannes filius suus infra etatem existens intravit in eisdem tenementis et morabatur quasi in custodia predicti [*sic*] tenendis in communi racione propartis sue sicut predictus Hugo pater suus illa tenuit. Et dicunt quod postea idem Stephanus et predictus Johannes filius Hugonis fecerunt conjunctim quandam cartam feoffamenti predicto

Note from the Eyre Roll—*continued.*

Rogero de Leycestre de tenementis predictis ipso Johanne tunc existente etatis quindecim annorum et attingente quintum decimum annum.

The Judgment was :—quia compertum est per Juratam istam quod predictus Rogerus de Leycestre habuit ingressum in predictis tenementis per

ESCOMENGEMENT.

[1]SALE *v.* BERHAM.

[2]I.

Un Johan se pleint vers Nicholas de Berham de diverses conspiracies par [un bref] en commune baunk.

La partie qil ne serreit respondu qar il fut escomenge.

Et mist avant un lettre qe ceo tesmoina et fut la lettre le erceveske Robert.

STAUNTON. respondez a li qar ceste lettre ne mie autentike qaunt a nous qar lercevesqe est mort.

SPIGURNEL. vous naverez mie par cest lettre un capcion.

Par quei agarde fut qil respondi etc.

[3]II.

Un bref[4] de escomengement fut mys auant encontre[5] le pleintif [6]sur la certificacion[6] Robert Erceueske de Cantebirs nadgers[7] mort.

SPIGURNEL. [8]Ceste breue[8] ne vous put valer pur ceo qe lerceuesqe est mort qar par [9]tele breue[9] apres sa mort homme ne grantera nul[10] capcion [11]etc.

Et[11] issint [12]fut il ouste de ceste execucion[12] par jugement.

[13]III.

Nota de tesmoignaunce descomengement.

[Nota] qe la lettre devesqe porte de tesmoignaunce[14] descomengement sur asqune person ne le fra mie nounrespounable tut soit ele mis

[1] Reported by *α*, *αα*, *β*, *δ* and *ζ* (twice). In *Fitzherbert*, I. f. 362*d*, 26. [2] Text of (I) from *ζ* (first version). [3] Text of (II) from *δ* collated with *ζ* (second version). [4] lettre *ζ*. [5] vers *ζ*. [6–6] de sust la temoinanz *ζ*. [7] nadgerez *ζ*. [8–8] la lettre *ζ*. [9–9] tiel lettre *ζ*. [10] mie la *ζ*. [11–11] *ζ omits.* [12–12] luy osta de cel excepcion *ζ*. [13] Text of (III) from *α* collated with *β*. [14] testmioignance *β*.

Note from the Eyre Roll—*continued.*

predictos Stephanum et Johannem conjunctim etc. et non per predictum Stephanum solum etc. consideratum est quod predictus Johannes filius Rogeri inde sine die et predictus Johannes filius Hugonis nichil capiat per breve istud set sit in misericordia pro falso clamore etc.[1]

EXCOMMUNICATION.

SALE *v.* BERHAM.

I.

One John brought action by a writ in the Common Bench against Nicholas of Berham for divers conspiracies.

The defendant said that the plaintiff ought not to be answered, for he was excommunicated.

And he tendered a letter testifying this; and the letter was written by the Archbishop Robert.[2]

Staunton J. Answer him; for this letter has no authority with us, the Archbishop being dead.

Spigurnel J. You would never get a *capias* on the strength of this letter.

And so it was held that the defendant must answer.

II.

A decree of excommunication certified by Robert Archbishop of Canterbury, lately deceased, was put in evidence to bar a plaintiff.

Spigurnel J. This decree can have no authority here, for the Archbishop is dead; and, after his death, you could never get a *capias* upon such a decree.

And so the plaintiff was ousted from this exception by judgment.

III.

Note of a certificate of excommunication.

Note that a bishop's certificate that a plaintiff is excommunicated will not relieve a defendant from answering him even though it be

[1] *m.* 70. [2] Robert Winchelsey. Elected 13 Feb. 1293; died 11 May 1313.

encountre lui kar homme navera jammes capcioun en la chauncelerie par tesmoignaunce[1] de tele lettre. Teste Roberto de Sale qe se pleint par bille de la Chauncelerie ou escomengement fut allegge encountre lui par lettre tesmoignale dil ercevesqe[2] Robert etc.

[3]NOTA.

Sub excepcione excommunicationis late fuerunt littere certificatorie in haec verba. Universis sancte matris ecclesie filiis ad quos presentes littere pervenerint Frater Thomas permissione divina Roffensis[4] Episcopus salutem et pacem in domino sempiternam. Noveritis quod Frater Johannes Abbas monasterii de Bello excomunicatus est et adeo diu fuit sententia excommunicationis innodatus sicut nobis constat per legitimam documentam. In cuius rei testimonium etc.

Abb. Sire ces lettres ne nous deiuent de nostre demande targer qar nous vous dioms qe nous ne sumes pas de la jurisdiction de cel Euesche ne son subiecte ne nule cause deinz ces lettres est compris pur quei le dit Euesqe nous deuoit auer escomenge ne qil meme nous escomenga mes tantsoulement tesmoigne qe nous sumes escomenge sicom il entendi dautri enseignement qe le certification est insufficient jugement si etc.

Et quia videtur Curie quod littere predicte certificatorie insufficientes sunt dictum est defendenti quod respondeat et respondit ultra per judicium.[5]

FORMEDOUN.

[6]SCOLAND *v.* GRAUNTSOUN.

[7]I.

Reverti. [8]Frank Scoland porta son bref de forme de doun en le reverti vers Willem le Grauntsoun [9]& demanda [10]certeins tenementz les queux un Geffrey son uncle[10] dona a[11] Richard Scoland [12]& a les heirs de son corps engendrez &[12] pur ceo qe Richard morust saunz heir de son corps reverti

[1] teumoynance *β*. [2] eveske *β*. [3] Note from *δ*. [4] The text has *Ens*, which I have ventured to e pand into Roff*ens*is. [5] See the case of *The Abbot of Battle* v. *The Prior of Trinity* under the head of *Quare non admisit* in Vol. III. The Bishop of Rochester seems to be the Bishop alluded to. From 1291 to 1316 Thomas de Wuldham was Bishop of Rochester. [6] Reported by *α*, *αα*, *β*, *γ*, *δ*, *ϵ*, *ζ*, *η*, *θ*, *κ*, λ. [7] Text of (I) from *γ* collated with *ϵ*, *η*, *κ*. [8] *η adds* Et pus en le Eyre. [9–11] et dit qe de *η*. [10–10] un mies xlviij acres x acres de pree ij acres de pasture et xxij. acres de boys xlix.*s*. de rente ix.*d*. q[a]*d*. et la rente de xxx galones de cerueys et demi en Hortone iuxta Dertforde de la seisine G. le fitz G. de Scoland etc. qy ceux tenemenz *κ*. [12–12] *η omits*.

tendered against him; for the Chancery would never issue a *capias* upon the evidence of such a letter. And this appeared in the case of Robert Sale who made plaint by a bill out of the Chancery, where excommunication was alleged against him on the strength of a letter testimonial of Archbishop Robert etc.[1]

NOTE.

To support an exception of excommunication letters testimonial in these words were tendered: 'To all the sons of Holy Church into whose hands these letters shall come Brother Thomas, by divine permission Bishop of Rochester, sends greeting and peace everlasting in the Lord. Ye shall know that Brother John, Abbot of the Monastery of Battle, is excommunicated and that sentence of excommunication was pronounced against him some time ago, as we are informed by a valid document. In testimony of which etc.'

The Abbot. Sir, these letters ought not to hinder us in our demand, for we tell you that we are not within the jurisdiction of this bishop nor subject to him; neither do these letters disclose any reason wherefore this bishop should have excommunicated us; nor do they even assert that he has excommunicated us, but they certify only that he understands by the testimony of others that we are excommunicate; and this is not a sufficient certificate. Judgment whether etc.

And because it appeared to the Court that the aforesaid letters testimonial were insufficient the defendant was told that he must answer; and he answered over by judgment.

FORMEDON.

SCOLAND *v.* GRANDISON.

I.

Reversion.

Frank Scoland brought his writ of formedon in the *reverter* against William Grandison and demanded certain tenements which one Geoffrey his uncle gave to Richard Scoland and to the heirs of his body begotten; and because this Richard died without heir of his body the

[1] This report entirely misses the point upon which the Court gave its ruling, namely that the Archbishop was dead.

le droit a G. [1]com a donor[1] de G.[2] quia obiit sine[3] &c. et[4] a Fraunk come a frere[5] de Fraunk a T. com a fitz[6] de T. [7]pur ceo qil morust saunz heir de son corps &c.[8] a Fraunk [9]come a frere[9] qi ore demande.

Stonor [10]defend & dit qil ne pout par ceste forme rien demander qar il dit qe autrefoiz devant certeines Justices[11] mesme cesti Willem porta assise de novel disseisine vers meyme cesti Fraunk [12]de mesme ceus tenementz ou Fraunk en propre persone vynt & dit en excusation son tort qe Geffray son auncle[13] avoit done les tenementz a un Richard en fee taile & pur ceo qe Richard morust saunz heir de son corps il entra en ceus tenementz com en sa reversion saunz tort fere.[14] A quei Willem [15]dit qe par taunt ne se pout il excuser qar il dist qe verite fust qe Geffray dona les tenementz[16] en fee taile [17]a Richard com vous avez dit[17] mes vous dioms qe mesme celi G. apres en la seisine lavantdit Richard relessa & quite clama tut le droit qil avoit en les tenementz &c a Richard & a ses heirs[18] a tenir [19]de chief seignurage[19] del fee par reson de qel reles [20]le droit de la reversion se esteint en la persone G. & sur ceo le dit Richard[20] se attorna a Otes de Graunsoun [21]chief seignur de ceus tenementz de son homage & de ses autres services[21] leqel Otes apres graunta le homage & les services mesme cesti Richard a mesme cesti Willem[22] de Graunsoun par vertue de[23] qel graunt Richard[24] se attorna [25]a Willem de son homage &c. & pur ceo qe Richard[25] fust bastard & morust saunz heir [26]de sey[26] entra cesti Willem en ceux tenementz com en sa eschete & dit qe ensuit fust il seisi taunt qe [27]Fraunk qi ore porte ceo bref lui[28] disseisi &c [29]& pria lassise.[29]

[1]–[1] κ *omits.* [2]–[3] pur ceo etc. η. [2]–[4] κ *omits.* [5] fiz κ. [6] frere κ. [7]–[8] η, κ *omit.* [9]–[9] η, κ *omit.* [10]–[11] accion ne poet aver qar altre fethe η. [10]–[23] Bien est verite qel es tenemenz furent en ascun tens en la seisine G. le fiz G. Scoland qe ceux tenemenz tynt en le maner de Keslyng de Otes de Graunson le quel G. dona ceux tenemenz a Ricard Scoland et a les heyres de son cors engendrez une pourparlance fut entre eux dun mariage issi qe ceti R. ne uoleit mie assenter si G. ne ly uoleit relesser xx. marcs de rente dount meymes les tenemenz furent chargez uers ly ensemblement od la reuersion de meymes les tenemenz qe ly fut regarde. Le quel G. en la seisine R. relessa etc. pour quey le droit de la reuersion de meymes les tenemenz fut esteynt issi qe Sire Otes de Graunson graunta les services issaunz de ceux tenemenz a Sire William uers qy etc. par κ. [12]–[14] ou meme ceti Frank allega en feisant son tort par veie de respons ceo dont il prent ore sa accion η. [13] ancestre ϵ. [15]–[18] replia qe ceus tenemenz par reson de reversion ne put il entrer qar meme celi Geffray qi dona a Richard relessa et quitclama le dreit de reversion etc. η. [16] ϵ *adds* ausi cum il avoit dit. [17]–[17] ϵ *omits.* [19]–[19] des chiefs seignurs ϵ. [20]–[20] il η. [21]–[21] etc. η. [22]–[24] qi a dit Willem η. [25]–[25] et η. [26]–[26] apres qi mort η. [27]–[28] η *omits.* [29]–[29] et cete chose trove par verdit de assize η. [27] From this point to the end of the case κ reads: cesti Fraunk ly oghta pour quey Sire William porta lassise de nouel disseisine certeyn iour et an le Roi E. piere le Roi E. qy ore est xxxj. devant Roi cy en Cantebirs ou Fraunk vynt et dit qe Sire William a tort porta ceti bref de assise e se fit title par reson de reversion ut supra e pleda a lassise ou lassise vynt et dit coment G. son auncestre etc. auoit relesse le droit de la reversion ut supra et qe William de Graunson fut entre par echete etc. pour quey fut agarde qe Sire William recouera sa

right to these tenements reverted to G. as the donor ; from G., because he died without etc. the right descended to Frank as his brother, from Frank to T., as son ; from T., because he died without heir of his body etc. to Frank, the present demandant, as brother.

Stonore defends and says that by this form Frank cannot demand aught ; for, says he, this very William did aforetime bring an assize of novel disseisin against this same Frank before certain justices touching these same tenements, and thereto Frank went in person and said in excuse of his tort that Geoffrey his uncle had given the tenements in fee tail to one Richard ; and because this Richard had died without heir of his body, he, Frank, had entered into these tenements, as into his reversion, without committing any tort. To which William replied that not so could Frank excuse himself ; for, said he, the truth was that Geoffrey indeed gave the tenement in fee tail to Richard, as you have said, but we tell you further that Geoffrey afterwards, while the tenements were in Richard's seisin, released and quitclaimed all the right which he had in the tenements etc. to Richard and his heirs to hold of the chief lord in fee. By reason of this release Geoffrey's right to the reversion was extinguished ; and thereupon the said Richard attorned himself to Otho Grandison, the chief lord of these tenements, by his homage and his other services ; and the said Otho afterwards granted the homage and services of this same Richard to this same William Grandison. By virtue of this grant Richard attorned himself to William by his homage etc., and because Richard was a bastard and died without heir of his body, this William entered upon these tenements as upon his escheat ; and he said that he was thenceforth seised until Frank that now brings this writ disseised him etc. ; and he prayed the assize.

---

seisine et demandoms jugement de si com troue fut par ceo verdit et par le pledor Fraunk Scoland qe le droit de la reversion fut defet par la quitclame si de cel droit qe fut esteynt par jugement et lassise William afferme bon puyssez rien demander.

Toudebi. Nostre bref est un bref de droit auxi haut com nous le poums auer en nostre droit dounc par nostre recoverer qe de ceo fit par assise de nouel disseisine le quel recoverer ne puet estre plus haut forsqe de fraunk tenement par ley de terre ne poez uous en nostre bref qe est si haut en le droit de accion barrer demandoms jugement de vous com de noun defendu.

Westcote. Conusez dunkes qyl auoit tiel recouerer e puys dites pour quey etc.

Toudebi. Nous sumes en ley de terre le quel qe cely auoit ou ne mie cel ne nous puet greuere et demandoms jugement ut supra. Item en un replegiare si vous auowez pour damages fesaunt ieo die qe ma comune prest de auerer etc. vous le trauersez com en vostre seuerale quidez par taunt recouerer la comune ou a perdre comune. Nanyl forsqe taunt soulement damages. Et ceo est la nature du play. Auxi par de ca en assise de nouel disseisine il niad plus haut recouerer qe fraunk tenement.

Frisk. En un *replegiare* pour damages fesaunt la comune nest mie en play forsqe taunt soulement damages recouerer pour un tort mes en assise de nouel disseisine la terre est en play et la terre a recouerer.

[1]Lassise agarde par la quele fust trove le dit & le title Willem de Graunsoun en la forme come il avoit plede sur qel verdit agarde feust qe Willem recoverist sa seisine &c & Fraunk en la merci & demande jugement del houre qil porte cesti bref de forme de doun & se fet title par vertue de une forme la qele feust anenti par verdit dassise si par tiel forme peusez rien demander.[1]

Toudeby vous aleggez un jugement[2] en assise de novel disseisine [3]le qel jugement[3] ne se peut tailler plus haut qe sur[4] le fraunktenement & ceo bref de forme de doun est un bref de droit[5] Jugement [6]si par nul jugement qe taille sur verdit dassise de novel disseisine qe ne peut estre qe de fraunktenement a cesti bref de droit nous peusse barrer.[6]

Fris. [7]Conicez le jugement & peus pledez.

Toudeby nous navoms meste qar vostre responce nest mie barre a nostre accioun.[7]

[1–1] Jugement si de reversion regardant a Geffray qe fut defet et esteint par sa quiteclame solom ceo qe fut troue par verdit de assise sur qel verdit jugements e fit qe Willem recoueri seisine de terre et demandoms jugement si cel jugement esteant en sa force rien puse par cel title rien demander *η*. [2] recouerir *η*. [3–3] qe *η*. [4] qe le nature de bref le veut qe est en *η*. [5] *η adds* a quei vous responet rien. [6–6] etc. *η*.

[7–7] *Westcote.* Nous esteinoms vostre dreit par la quiteclame etc. qe fut troue par verdit de assise.

Heruy. Il vous dit coment qe lassise die chose inpertinent ceo ne chaungera pas le jugement qil ne fra en le franctenement.

Ht. Par mi ceo jugement en assise de novel disseisine put dreit estre trie.

Toud. Le jugement se lie en assise de nouel disseisine en le franctenement et nous pledoms nostre dreit Jugement de vous com noun defendu et sur ceo demoura en vos jugements qar si ieo porte lateinte et si troue seit qil fut seisi et disseisi tot seit ceo qe par altre title qe la partie ne plede ieo ne prendray rien pur quei sur le title ne git pas lateinte einz sur point de assise donc sur cel point couent qe lassise se lie et vostre respons qe vous ore donet nest pas a traverse de nostre accion, *η*.

Malm. Tut seit terre a recouerer ceo nest forsqe de fraunk tenement dounc nostre accion est de recouerer fee et droit qe ne chet pas en recouerer de assise.

Hertilp. Par verdit de assise la ou Fraunk se auoit fet title pour la tenaunce sauuer par droit de la reversion apres la mort G. son auncestre si com il fut ore par vey de accion le quel title par ceo veredit fut defet et par reson de la quiteclame qe fut troue sulom veredit le droit de la reuersion anenty pourquey demandoms vos jugements si encontre cel recouerer qy proue lour estat estre defet puyssent accion auer.

Spigurnel. Coment puet lour droit estre anenty par cel veredit de si com il furent chargez par la sulom la disseisine.

Malm. Par veredit qe de ceo fit sur la quitclame ne pount il mie estate defere qar el ne fut mie mise auaunt a la court par nul des parties ne deditz eynz forske soulement euidence si issint fut pur quey par cel etc.

Spigurnel. Assise de nouel disseisine puet estre plede en deverse maneres et sulom la plee des parties puet el passer. Dounc en taunt com il diunt qe Fraunk se fit title de la reversion de qy il prent ore sa accion le quel par veredit de assise fut troue pour nul et anenty coment poez vous de cel estate esteynt accion auer.

The assize was awarded and found that the facts were as stated, and that William Grandison's title in the form was as he had pleaded. And upon this finding judgment was given that William recover his seisin etc., and that Frank be in mercy. And now we ask judgment whether, since Frank brings this writ of formedon and builds up a title upon a form which was found to be bad by the verdict of the assize, he can demand aught by virtue of such form.

Toudeby. You allege a judgment in an assize of novel disseisin. Now this judgment can affect no higher estate than the freehold, and this writ of formedon is a writ of right. Judgment whether we can be barred from this writ of right by any judgment founded upon the verdict of an assize of novel disseisin which can only affect the freehold.

Friskeney. Admit the judgment, and then plead.

Toudeby. We need not do that, for your answer does not bar our action.

Malm. Nostre title ne puet estre defet par lour veredit pur ceo qe el ne fut mie mis auaunt en barre de nostre title qar nostre title qe nous feymes si fut taunt soulement pour nostre tort excusere qe a tort porterent cel assise.

Spigurnel. Le title fut fet pour vostre tenaunce.

Toudebi. Vous nestez pas le recouerer forsqe a chacer nous a nostre attaynt e oghter nous de ceti bref mes si portissoms ceo la et troue fut qe nostre title fut veray et la quitclame qe fut afferme par la assise fut nule quidez uous qe nous qe nous recouerioms uers vous pour taunt quod diceret non pas fraunk tenement a pour ceo qe lattaynt serrait charge sur la disseisine qe est la nature de assise pur quey il semble par meyme la reson qe cel veredit de assise nest a prendre forsqe sur la disseisine et ne mie sur le fet si par tiel veredit troue fut qe le tenaunt nauoit disseisi le seygnour de qy il tynt et dit outre qe le droit demoura mie en la persone le tenaunt par cel quitclame et le seygnour venist et recouerist par eschete etc.

Heruy. Gardez uos iours le Iuuedy procheyn apres la natiuite de nostre dame a quel iour il fut non suy.

SPIGURNEL. Quant le jugement se fit en assise[1] ceo fust [2]sur certeine cause qe fust[3] pur ceo qe le title Willem fust trove verrey [4]le qel il aleggea ut supra[4] & vostre title qe vous[5] aleggeastes [6]de meintener vostre tenaunce adonqes fust[6] anenti [7]& defet par mesme lassise sur qel title vous foundez ore vostre accioun[7] par qey il[8] semble qe a tiel bref ou accioun foundu sur title qest[9] de fet & anenty ne devez estre respondu.

Toudeby en un Replegiare jeo avowe en mon several &c & vous ditez qe ceo est vostre comune trove est par enqueste qe ceo est vostre comune uncore ne recoverez mie comune [10]qar le jugement se fit sur la nature del plee ausi par[11] de cea coment qe les parties nent[12] plede sur quiteclame ou sur autre chose en evidence de lassise uncore jugement ne se peut fere mes sur le fraunktenement soulement[13] par [14]qel jugement[14] vous ne nous poez barrer en cesti bref de droit.

Fris. [15]de ceo qe vous avez dit de la comune [16]non est simile[17] qar la comune [18]ne fust mie en play en le cas qe vous avez mis[18] mes en lassise [19]de novel disseisine[19] le fraunktenement fust[20] en demande a recoverir ou a perdre & aussint est il ore.

Toudeby [21]si le title ne feust pas verrey qe vous aleggez en la novel disseisine[21] il covent qe jeo soye eide par [22]ateinte ou par voie daccioun &c com par bref &c mes si Je si portase lateinte qe deist qe le title feust fas[23] le qel lassise fesoit bon uncore ne serroyt il mie ateint de faus serment en droit del fraunktenement qar il peut estre qil feust seisi del fraunktenement & ceo par autre title & issint lateinte nous ne serviroit par qey il covent qe jeo soye a ma accioun par cesti bref qe est mon bref de droit.

[24]Et sur ceo furent les parties ajornez[25] &c.

SPIGURNEL la ou vous parlez dateinte vostre reson tendroit bien [26]si lassise se ust charge davoir dit sil fust disseisi ou noun mes ele ne se chargea point mes counta une verite de fet & prierent eide &c sur qel verdit le justice agarda qil yavoit disseisi[26] issi qe le fet [27]qil counterent[27] fust cause de jugement sur qele cause homme peut aver ateinte.

[1] η *adds* de novel disseisine. [2–3] η *omits.* [4–4] η *omits.* [5] η *adds* adonqes. [6–6] η *omits.* [7–7] issint vostre title de vostre tenance anienti de qel vous pernet ore vostre accion η. [8] ϵ *adds* lur. [9] qe dedonqes fust ϵ. [10–12] pur ceo qe jugement ne se purra lier plus haut qe la nature de bref sed ex ista parte coment qe parties unt η. [11] ϵ *omits.* [12] eient ϵ. [13] η *adds* com la nature de bref le veit. [14–14] quei &c. ϵ. [15–17] nest pas semblable ϵ. [16–17] ne est mye semblable ϵ. [18–18] nest pas en demande η. [19–19] η *omits.* [20] ne est pas [*sic*] η. [21–21] η *omits.* [22–25] ceti bref qar lassise ne passa pas sur le gros pur quei latteinte git pas qar si lateinte deit qil vssent fet faus serment en dreit de title uncore uncore [*sic*] ne serreit pas ateint de faus serment pur ceo qil fut estre seisi de franctenement par altre title η. [23] fals ϵ. [24–25] ϵ *omits.* [26–26] mes la ou lassise conte le fet et prie eide la court agarde une disseisine η. [27–27] qi est reconu par assise η.

Spigurnel J. When the judgment in the assize was given it was what it was for a certain reason, namely that William's title had been found good. This title he has here set out. The title which you alleged in proof of your tenancy was at the same time declared worthless and was repudiated by the same assize. Upon this same title you are now basing your action; consequently we are of opinion that to a writ commencing an action based upon a title that has been condemned and found bad you ought not to be answered.

Toudeby. In a replevin I avow that I hold in severalty etc., and you say that this is your common. The jury finds that it is your common, and yet you cannot recover a common, for the judgment is modelled upon the nature of the plea. So here; for though the parties have not relied upon the evidence of quitclaim nor of aught else [such] in their pleadings before the assize, yet the judgment must turn upon the freehold only; and you cannot bar us in this writ of right by that judgment.

Friskeney. What you have said about a common does not apply here, for common was not in question in the case you have supposed; but in the assize of novel disseisin the freehold was in issue, to be recovered or to be lost, and so it is now.

Toudeby. If the title which you alleged before the assize of novel disseisin were not true I ought to have my remedy by way of attaint or action etc., as by writ etc., but if I should bring an attaint, and it should be found that the title which the assize found to be good was in fact bad, yet, for all that, the assize would not be attainted of a false oath as touching the freehold, for Richard may have been seised of the freehold by some other title. So attaint would not assist us; and therefore I ought to have my action by this writ, which is my writ of right.

And thereupon was the hearing adjourned etc.

Spigurnel J. You would be right in what you say as to attaint if the assize had taken upon itself the responsibility of finding whether the complainant had or had not been disseised, but this it did not do, but found a certain fact, and then prayed assistance etc. And upon that finding the Court gave judgment that the complainant had been disseised; and so the fact found by the jury was the cause of the judgment, and upon that finding you may bring an attaint.

[1]*Toudeby* si lateynte venist & deist qe G. ne quiteclama point a Richard uncore ne serreit pas le primer assise ateinte de faus serment quant a la disseisine par quei &c.[1]

Hervi. la cause del primer jugement fust pur ceo qe lassise dit qe Richard avoit fee simple dount si lateinte deist qe il navoit mie fee simple asez serreit la primer assise ateint.

[2]*Toudeby.* Sire nenil qar il peut estre seisi par autre title &c com de fraunktenement.

Spigurnel homme nenquera james en tiel cas dautre title.

Toudeby nous demoroms en voz jugementz.[2]

[3]Spigurnel & Hervi[3] einz ceo qe nous aloms[4] a jugement il covent qe vous conicez sil iavoit [5]tiel record &[5] tiel jugement ou noun qar cest exception est peremtore.

[6]*Toudeby* tut feust lexception verrei la qele il mettent avant ele ne serroyt pas barre a cesti bref qar le jugement qil aleggent ne se fist mes soulement sur le fraunktenement & cesti bref est de droit par quei nous navoms meste a conustre ne a dedire &c.

Et [7]sur ceo furent les parties adjornez a un autre jour a qel jour Fraunk Scoland fust noun siwy ideo ipse et plegii ejus in misericordia.[8]

Note from the Eyre Roll.

Frank's count was :—quod predictus Galfridus avunculus etc. fuit seisitus de predictis tenementis in dominico suo ut de feodo et jure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo inde expletias ad valenciam etc. qui eodem tempore tenementa illa dedit predicto Ricardo tenenda in forma predicta etc. et quia predictus Ricardus obiit sine herede de corpore suo exeunte etc. revertebatur jus etc. predicto Galfrido donatori etc. et de ipso Galfrido quia obiit sine herede de se etc. descendit jus reversionis etc. cuidam Franco ut fratri et heredi etc. Et de ipso Franco cuidam Thome ut filio et heredi. Et de ipso Thoma quia obiit sine herede de se etc. isti Franco qui nunc petit ut fratri et heredi etc.

William's plea 'quo ad tenementa versus eum petita,' was :—Quod predictus Francus non debet inde responderi etc. quia dicit quod idem Willelmus alias in Curia domini Edwardi Regis patris domini Regis nunc coram Justiciariis ejusdem Regis patris etc. ad placita sua hic in Crastino Sancte Trinitatis anno regni sui Tricesimo arramiavit quandam assisam nove dis-

[1–1] *η omits.* [2–2] *η omits.* [3–3] ϵ transposes names; Stauntone *η*. [4] porroms aler ϵ. [5–5] *η omits.* [6–8] Et pur ceo qe tut son conseil entendi qe il prendreit rien il fut non sui *η*. [7–8] fuerunt adjornate usque ad alium diem. Ad quem diem Franco non fuit prosecutus. Ideo &c. in misericordia &c. ϵ.

Toudeby. If the attaint came and said that G. did not quitclaim to Richard, the first assize would not thereby be attainted of making false oath touching the disseisin. Wherefore etc.

STAUNTON J. The cause of the first judgment was the finding by the assize that Richard had the fee simple. If, then, the attaint found that he had not the fee simple, that would be tantamount to attainting the first assize.

Toudeby. Sir, not so ; for Richard might have been seised by some other title etc. as of freehold.

SPIGURNEL J. In such a case no enquiries as to other title would be made.

Toudeby. We abide your judgment.

SPIGURNEL and STAUNTON JJ. Before we proceed to judgment you must admit or deny the alleged record and judgment, for this exception is a peremptory one.

Toudeby. Though the exception which they put forward were a true one yet would it not be a bar to this writ, for the judgment which they allege was concerned with the freehold only, and this is a writ of right. Consequently we need neither admit nor deny etc.

And thereupon the parties were adjourned to another day, on which day Frank Scoland was nonsuited. So he and his pledges are in mercy.

Note from the Eyre Roll—*continued.*

seisine versus ipsum Francum et alios de tenementis nunc petitis et aliis etc. qui quidem Francus coram prefatis justiciariis allegavit quod predictus Galfridus Avunculus etc. dedit predicta tenementa predicto Ricardo de Scoland tenenda sibi et heredibus de corpore suo exeuntibus et si idem Ricardus obiit sine herede de corpore suo exeunte tenementa illa reverterentur ipsi Galfrido et heredibus suis etc. Qui quidem Ricardus obiit sine herede de corpore suo exeunte per quod predictus consanguineus et heres ejusdem Galfridi ad quem reversio etc. spectabat intravit in tenementis illis et illa tenuit absque aliqua disseisina predicto Willelmo inde facienda etc. et idem Willelmus tunc replicando cognovit quod predictus Galfridus avunculus etc. dedit predicto Ricardo tenementa predicta tenenda in forma predicta set dixit quod tenementis illis in seisina ipsius Ricardi existentibus idem Galfridus postmodum remisit et quietum clamavit totum Jus quod habuit vel habere potuit predicto Ricardo et heredibus suis in predictis tenementis tenendis de capitalibus dominis feodi etc. per servicia inde debita etc. Et dixit quod idem Ricardus postea se attornavit cuidam Otoni de Grandissono tunc capitali domino de homagio suo etc. Qui quidem Oto postmodum feoffavit ipsum Willelmum de Grandissono de manerio de Kemesinge ad quod servicium predicti Ricardi pertinebat et idem Ricardus se attornavit eidem Willelmo

Note from the Eyre Roll—*continued.*

de homagio et fidelitate sua pro predictis tenementis etc. Ita quod partes inde posuerunt se super assisam per quam quidem assisam tunc ibi inter eos captam compertum fuit quod predictus Galfridus avunculus etc. remisit et quietum clamavit predicto Ricardo totum jus quod habuit in predictis tenementis etc. tenendis de capitali domino et quod idem Ricardus de servicio suo se attornavit predicto Otoni et postea isto Willelmo ut predictum est et quod idem Ricardus bastardus etc. obiit seisitus de tenementis illis post cujus mortem idem Willelmus capitalis dominus etc. seisivit predicta tenementa ut jus et escaetam suam etc. per quod consideratum fuit in prefata Curia coram prefatis justiciariis quod prefatus Willelmus recuperavit (*sic*) seisinam suam de predictis tenementis etc. Et ex quo predictus Francus ad prefatam

[1]II.

Formé de doun en le reverti. Casus Placiti: G. de Scolande dona certeins tenemenz a Richard de Scolande en fee taile et puis lui fit un reles a tenir de chef seignour de fee issi qil dut tenir de Otes de Graunson com de chef seignour par mi qele reles il se atorna a Otes et Otes puis seisi etc. Puis Otes granta ses services a W. de Graunson par my quel grant W. fust seisi de ses services. Lequel R. fust bastard et devia sanz heir etc. Et puis W. entra cum en par voie deschete et fust seisi taunt qe disseisi par Franc par quel W. porta lassise de novel disseisin et recoveri. Apres ceo la franktenement demande par mi la forme en le reverti etc. de S. a G. le donor descendi a Franc com a frere du sanke de Franc a T. com a fitz de T. a Franc qe ore demande com a frere etc.

Fraunke de Scoland porta soun bref de fourme de doun en le reverti et dit qe de Richard Scoland reverti le dreit de la reversioun &c pur ceo qil morust saunz heir de soun corps a Geffrei Scoland come au donour de Geffrei pur ce qil morust &c descendit le dreit &c a Fraunke Scolande come a frere de Fraunk a Thomas come a fiz de Thomas a Fraunk come a frere qe ore demande.

Stonore actioun ne poez avoir qe autre foitz William de Granson vers qi cestui bref est porte porta une assise de novel disseisin vers mesmes cestui Fraunk tiel an tiel lieu etc. devaunt etc. ou mesmes cesti Fraunk allegga en escusaunt soun tort par vei de response ceo dount il print ore[2] sa accioun a qei mesmes cesti William replia qe en ceux

[1] Text of (II) from α collated with β and λ. Head-note from β collated with $\alpha\alpha$. α has in margin: Fraunke de Scoteland porta bref de fourme de doun ou plc dassise sur reles fut allegge en barre daccioun, par qei il fut noun suy a cesti bref et postea recovery par atteinte sur la primere assise. [2] β *adds* son title e.

Note from the Eyre Roll—*continued.*

assisam respondens allegavit titulum tenancie sue in tenementis predictis jure reversionis etc. per quem quidem titulum modo nititur recuperare eadem tenementa qui quidem titulus per judicium Curie adnullatus fuit petit judicium etc.

Roesia's plea, 'quo ad tenementa versus eam petita,' was :—Quod post mortem predicti Ricardi viri sui etc. tenementa predicta assignata fuerunt eidem Rose tenenda nomine dotis etc. et dicit quod ipsa parata est inde se attornare cuivis Curia considerabit quod se attornare debeat tanquam Warrantori dotis sue etc.

Postea predictus Francus non est prosecutus. Ideo ipse et plegii sui de prosecutione in misericordia.

II.

Formedon in the *reverter* : in which it was pleaded that G. Scoland gave certain tenements in fee tail to Richard Scoland and subsequently released them to him to hold of the chief lord of the fee, so that he should hold them of Otho Grandison as of the chief lord. By virtue of which release Richard attorned himself to Otho, and Otho was then seised etc. Afterwards Otho granted Richard's services to William Grandison, in virtue of which grant W. was seised of his services. This same Richard was a bastard and died without heir etc. And W. afterwards entered as upon his escheat, and he was seised until that he was disseised by Frank. Whereupon W. brought an assize of novel disseisin and recovered. After this the freehold is demanded by a writ of formedon in the *reverter* etc. from S. to G. the donor, descending to Frank as a brother of the blood, from Frank to T. as to a son, from T. to Frank the present demandant as a brother.

Frank Scoland brought his writ of formedon in the *reverter*, and said that the right of the reversion etc. reverted to Geoffrey Scoland, as to the donor, from Richard Scoland, because Richard died without heir of his body ; that the right descended to Frank Scoland as brother ; from Frank to Thomas, as son ; from Thomas to Frank the present demandant, as brother.

Stonore. You have no right of action, for before now William Grandison, against whom this writ is brought, brought an assize of novel disseisin against this same Frank in such a year and in such a place, before etc., when this same Frank defended his tort by pleading the same facts upon which he now bases his title and right of action ; to which William replied that Frank cannot enter upon these tenements

tenemenz par reson de reversioun ne poet il entrer qe mesmes celui Greffrei[1] qy dona a Richard S.[2] al dit Richard[3] granta relessa et quiteclama le dreit de la reversioun a aver et tenir a lui etc. des chiefs seignurages [4]de fee etc. par les services etc. par [5]force de[6] quel graunt Richard se attourna a Otes de Granson com a chief seignur[7] le quele Otes granta les services mesmes cestui Richard a William de Granson qe al dit William se attourna et fust bastard et morust [8]sanz heir[9] son tenant apres qi mort William entra come sa eschete et issi seisi fust taunt qe disseisi fut etc. et ceste[10] trove par verdit dassise et demandom jugement si de la reversioun regardaunt a Geffrei qe fust defet et esteint par sa quiteclame sulom ceo qe trove fust par verdit dassise si actioun puet aver.

Toud. vous alleggez un recoverir en assise [11]de novel disseisin[12] qe ne se put tailier plus haut qe la nature de bref ne voet qest en le fraunctenement et ceo est nostre bref de dreit a qei vous ne respondez nient. Jugement de vous com de noun defendu.

Westcote nous esteignoms vostre dreit par la quitclame Geffrei nostre[13] ancestour solum ceo qe trove fut par verdit dassise.

Hervi il vous dist qe coment qe assise die chose impertinent ceo ne chaunge mie la nature de jugement qil [14]nescit qen[15] le franktenement.

Hertep. par mise de partie en assise de novel disseisin peut droit estre trove.[16]

Toud. le jugement se lie en assise de novel disseisin en le fraunctenement e nous pledoms nostre droit. Jugement de vous com de noun defendu et sur ceo demora en votz jugmenz qe si jeo porte latteinte et trove soit qil fu seisi et disseisi tout soit ceo par autre title qe la partie nad plede jeo ne prendrai rien par qi sour le title ne gist paas latteint einz sur point dassise dount sur cel point covient qe lassise se lie.

Frisk. conisez dunqe le jugement et puis pledez.

Toud. nous navums mie mestre qe vostre response nest mie en trauvers de nostre actioun.

Spig. quant le jugement se fit en lassise de novel disseisin ceo fust pur ceo qe le title William fut trove verrai e vostre title qe adounqe allegastes anienti e issi vostre title de votre tenaunce anienti de qel

[1] *β adds* saver. [2] Scoland *a*. [2–3] *β omits*. [4–7] λ *omits*. [5–6] *from β; a omits*. [8–9] *from β; a omits*. [10] *β adds* chose. [11–12] λ *omits*. [13] vostre *β*. [14–15] ne fra en *β*, λ. [16] trie *β*, λ.

by virtue of the reversion, for that same Geoffrey, to wit, he that gave them to Richard S., did grant, release and quitclaim the right to the reversion to that same Richard to have and to hold to him etc. of the chief lord in fee etc. by the services etc.; by virtue of which grant Richard attorned himself to O. Grandison as to the chief lord. And the said O. granted these said services of the said R. to William Grandison, and Richard attorned to the said William. Now Richard was a bastard and died without heir as William's tenant. Upon Richard's death William entered as upon his escheat, and so continued seised until he was disseised etc. And this was found by the verdict of the assize; and we ask judgment whether he can have action for the reversion based on any right of Geoffrey, seeing that Geoffrey's right to the reversion was annulled and extinguished by his quitclaim, as was found by the verdict of the assize.

Toudeby. You allege a recovery in an assize of novel disseisin; but this cannot affect a higher estate than that contemplated in the writ, which was in respect of freehold, while our writ is a writ of right, to which you make no answer. Judgment of you as making no defence.

Westcote. We extinguished your right by the quitclaim of Geoffrey our ancestor, as was found by the verdict of the assize.

Staunton J. But what he says to you is that though the assize may have said something that was not pertinent yet that does not change the nature of the judgment, which dealt only with the freehold.

Hartlepool. By issue between the parties the right may be found in an assize of novel disseisin.

Toudeby. The judgment in the assize of novel disseisin was concerned only with the freehold, and it is our right that we are claiming here. Judgment of you as not making any defence. And as to this I will abide your judgment, for if I bring an attaint and it be found that William was seised and disseised, although he were seised by some other title than that pleaded, I shall get nothing, because the attaint does not depend upon the question of title but upon the specific question which the assize is brought together to determine.

Friskeney. Admit the judgment then, and plead to it.

Toudeby. We have no need to do that, for your answer is not in traverse of our action.

Spigurnel J. The judgment that was delivered in the assize of novel disseisin was based upon the finding that William's title was a good one, and that the title which you then put forward was worthless, and thereby your title to the tenancy, the same title upon which you

title vous pernez ore vostre action par qey il semble qe a nul action foundu sur cel title issi defet devez estre respondus.

Toud. en un *replegiari* jeo avowe en moun several vous dites qe ceo est vostre comune [1]pais se joint et dit qe ceo est vostre comune[2] vous ne recoverez nul comune pur ceo qe le jugement ne se purra lier plus haut qe la nature du bref nest auxi de za coment qe parties ount pledez sur quiteclama ou sur autre chose en evidence dassise le jugement ne se[3] purra fere mes[4] sur le franctenement com la nature de bref le voet par quel jugement a nostre bref de dreit ne devoms estre barrez.

Fr. de rien semblable kar la comune nest paas en demande [5]en la cas la ou vous lavez mis mes en lassise le fraunctenemenz est en demande[6] a recoverir ou a perdre et si est il ore.

Toud. il covient qe jeo soi eide par cesti bref ou par latteint mes si [jeo] portasse latteinte qe deit qil eusont fet faus serement en dreit du title uncore ne sereient il paas atteinz de faus serement pur ceo qil puet estre seisi dil fraunctenement par autre title.

Spig. la ou vous parlez de latteinte vostre reson se lie bien la ou il dit simplement seisi ou disseisi mes la ou lassise counte[7] le fet et prie eide de la court et la court agarde une disseisin issi qe le fet qest resconu par assise est cause de cel jugement sur cele cause homme put aver latteinte.

Toud. de ceo qe fut conu par assise homme puet aver latteinte et daltre chose nemie mes lassise ne dit paas sil fut seisi ou noun mes counta la verite dil fet sur quei les justices agarderont un disseisin par qei si latteinte deit qe [8]G. moun auncestour[9] ne quiteclama point a Richard *ut supra* uncore ne sereient il paas atteinz de faus serement qaunt a la disseisin.

Hervi. la cause dil jugement en lassise[10] fut pur ceo qe lassise dit qe Richard avoit fee simple dount si latteinte deit qe Richard navoit paas fee simple assez sereit la primere assise atteinte.

Toud. nanyl kar il pout aver fraunctenement par autre title.

Spig. et Stant. einz ceo qe nous pussoms aler a jugement il covient a conustre sil fut tiel jugement come il alleggent.

Pur ceo qe tut soun conseil entendi qil ne prendreit rien fut[11] noun

[1–2] *β omits.* [3] ceo *β.* [4] forsqe *β.* [5–6] *β omits.* [7] conue *β.* [8–9] Geffrai mon pere λ. [10] *from β ; a has* la seisine. [11] si fut il *β.*

are bringing your present action, was declared invalid. In consequence of which we are of opinion that you ought not to be answered in any action brought upon this title so declared invalid.

Toudeby. In a *replegiare* I avow in my severalty. You say that this is your common. A jury is impanelled and says that this is your common. You will not recover any common, for the judgment cannot affect anything that is of a higher nature than what is named in the writ. So here. Though the parties to the assize may have, in their evidence, pleaded a quitclaim or aught else, the judgment will determine the question of freehold only, as the nature of the writ contemplates, and that judgment ought not to act as a bar to our writ of right.

Friskeney. The cases are not parallel, for common is not in demand in the case you have supposed, but in the assize the freehold was in demand, to be recovered or to be lost. And so it is here.

Toudeby. Either by this writ or by an attaint I ought to have a remedy. But if I were to bring an attaint, and it should find that [the assize] had made false oath in respect of the title, that finding would not attaint the jurors of false swearing, because seisin of the freehold might be by some other title.

Spigurnel J. What you say as to the attaint is correct in the case when the assize has said simply ' seised ' or ' disseised ' ; but if it has found a special verdict and asked the Court to determine its legal consequences, and the Court adjudges a disseisin, so that the fact found by the assize is the fact upon which the judgment is based, then in such circumstances you can have an attaint.

Toudeby. Attaint may be had touching aught that was found by the assize, but of naught else. Now the assize did not say whether he was seised or not, but found the truth of a certain fact, upon which finding the Court adjudged a disseisin. Consequently if the attaint were to say that G., my ancestor, did not quitclaim to Richard *as above*, the assize would not be attainted of false oath by the fact that the Court gave judgment of disseisin.

Staunton J. The cause of the judgment in the assize was the fact that the assize said that Richard had the fee simple. If, then, the attaint should say that Richard had not the fee simple, that would be sufficient to attaint the first assize.

Toudeby. Not so ; for he might have had a freehold by some other title.

Spigurnel and Staunton JJ. Before we proceed to judgment it ought to be admitted whether the previous judgment was as is alleged.

And because all of his counsel were of opinion that he could not

suy et puis en mesme leire porta un atteinte [1]sur la primer assise ut patebit infra.[2]

[3]Nota qe si jugement seit alegge qe se fist en bref de possessioun encontre bref de dreit il covient conustre li jugement ou dedire ut patet in isto placito.[4]

[5]III.

Forma Donacionis.

Fraunk de Scoland porta son bref de forme vers William de Grauntson[6] & demanda les ij. parties del Maner de E. e vers Rois qe fut la femme Richard de Scoland la tierce partie del maner avantdit e dit qe ceo est son droit & son heritage & dont un Goffrei de S. [7]fut seisi en son demene com de fee et de droit en temps[8] &c la quel[9] hors &c. sa seisin[10] dona mesme le maner a un Richard de Scoland & as[11] heirs de son corps engendrez &c [12]par mi quel don &c par la forme del don avandit &c. de Richard decendi pur ceo qe il devia sanz heir de son corps reverti le droit & devoit revertir a ly com a donor de ly pur ceo qe il devia &c decendi &c com [*sic*] a Fraunk com a frere & heir qe ore demande &c les ques &c & mesme vers Rois &c.

Stonor la veue & habuit.

A un altre jour.

Stonor.[13] Fraunk en ces tenementz rien pus demander qar [14]il dit qe mesme celi Geffray[15] de qi il prent son [title] dona ces tenementz a Richard de S. & a les heirs &c rendant par an a mesme celuy[16] xx. marcs puis une purparlance se prit entre eux G. & R. que Richard prendroit la file G. par quay ly relesse & quiteclame a mesme celi Richard tout le droit qe il avoit en mesme ces tenementz e en la rent avandit de vint marcs al dit Richard[17] a tous jours a tenir [18]de chef seynurages del[19] fee &c issint par [20]vertu de cel quiteclamance[21] Richard se atorna a un B. qe

[1–2] in eodem itinere λ. [2] *See* Vol. I. p. 158. [3–4] *from* β ; *a and* λ *omit.* [5] Text of (III) from ζ collated with δ. [6] *from* δ ; ζ *has* Cressi. [7–8] *from* δ. [9] δ *adds* G. lessa. [10] δ *adds* et. [11] a les δ. [12–13] δ *reads* :—Et si etc : par vertue de quel doun lauantdit Ricard fut seisi en son demene com de fee etc. solom la forme auantdit lequel Ricard deuia saunz heir de son corps pour quei le droit des tenemenz reuerty et deuoit reuertir a G. com a donor de G. pur ceo qil deuia saunz heir etc. descendit le droit de la reversion etc. a Fraunc com a frere et heir de F. a T. com a fitz de T. pur ceo qil deuia saunz heir etc. a Fraunc com a frere et heir qore demande. Et les queux apres la mort R. a meme cesti Fraunc deuient reuertir par my la forme pur ceo qe lauantdit R. deuia saunz heir de son corps issaunt. Et au cele counta deuers Royse etc.

Stonr. defend etc. et demanda la vewe.

La vewe est grante pus apres quant il auoint la vewe si counterent il autrefoitz et pus

Ston. defendit etc. et dit qe.

[14–15] par la reson qe lauantdit T. δ. [16] δ *adds* G. [17] δ *adds* et a ses heirs. [18–19] du chief seignour de δ. [20–21] cele reles δ.

succeed Frank was nonsuited. And afterwards in the same Eyre he brought an attaint against the first assize, as is reported hereafter.[1]

And here you shall note that it appears from this case that if a judgment given under a possessory writ be pleaded in bar of a writ of right, such judgment must be [formally] admitted or denied.

III.

Formedon in the *reverter.*

Frank Scoland brought his writ of formedon against William Grandison and demanded two parts of the manor of E., and against Roesia that was wife of Richard Scoland he demanded the third part of the aforesaid manor, saying that all this was his right and heritage; and that of it one Geoffrey S. was in the time etc. seised in his demesne as of right and fee, and that the said Geoffrey did out of his seisin give the said manor to one Richard Scoland and the heirs of his body begotten etc.; and that by virtue of that gift and of the form of that said gift etc. and from Richard the right descended, and because Richard died without heir of his body the right reverted and ought to revert to G. as donor, that from G., seeing that he died etc., it descended to Frank the present demandant as to a brother and heir; the which etc.; and as against Roesia he counts etc.

Stonore [demanded] a view; and he had it.

Upon another day :—

Stonore. Frank cannot demand aught in these tenements, for [William] says that this same Geoffrey from whom Frank derives his title gave these tenements to Richard S. and the heirs etc. they to pay yearly therefor to the same Geoffrey twenty marks, and that afterwards there were negotiations between G. and R. to the end that Richard should marry G.'s daughter, and by reason of this G. released and quit-claimed to this same Richard for ever all the right which G. had in these tenements and in the rent aforesaid of twenty marks, so that Richard should hold of the chief lord of the fee etc.; and by virtue of this quit-claim Richard attorned himself to one B. that was chief lord. This B.

[1] See vol. I, p. 158.

fut chef seignur le quel B. granta les services mesme cesti Richard a W. de Graunson par vertu de quel grant Richard se atorna a William de son homage & de sa fealte pus Richard morust sanz heir de son corps et fut bastard par quay William de G. cum seignur entra[1] en ces tenementz com en sa eschete[2] vint mesme celi & luy osta William porta lassise ou Fraunk ly fit titlez en pledant & dit qe un Richard[3] son auncestre dona ces tenementz a un Richard en fee tayliez com ore fet le quel Richard morust[4] sanz heir e il entra en sa reversion &c. ou William pleda a son title & dit qe en sa reversion ne pout il entre qar il dit qe mesme cely G. en la seisin mesme celi Richard[5] relessa [6]& quiteclama[7] tout le droit qe il avoit en mesme ces tenementz a mesme cesti Richard & a ses heirs a tenir de chef seynurage del fee par les services &c [8]le quel nous granta les serviz &c ut supra et il se aturna ut supra & morust seisi bastard & sanz heir de sei par quay William entra ut supra[9] & seisi fut si la qi Fraunk li disseisi &c. ou lassise vint & dit en mesme la maner com William avoit dit par quay W. recoverast seisine par veu de jorusts[10] & demandoms jugement [11]de pus qe autre foit fut trove qe G.[12] de qi vous prenez vostre title relessa & quitclama en la seisin Richard tut son droit qe il avoit en ces tenementz par vertu de quel reles le droit fut estaint en sa person si par un forme de don en le reverti ren poez en ceuz tenementz demander.

Toud. par la ou cesti Fraunk porte cesti bref de forme en le reverti qe est un bref de droit al auncien lay ou en son cas altre bref de droit ne git[13] ci et il nous biount barrer daccion par [14]verdit de une assise de novel disseisin[15] jugement si par [16]verdit de tel assise qe est de si bas nous poez barrer de cesti bref qe est de si halt nature.[17]

Westcote si[18] la partie se fit title & pleda en le droit[19] sur ceo lassise charge e la chose par lassise [20]trove en presenz de partiez jugement &c.[21]

Toud. lassise ne [22]dut pas dire fors verdit sur seisine[23] de fraunk-tenement[24] si lassise die [25]ascun chose en tost qe est en le droit ceo est[26] impertinent al plee & nest[27] de record par quay ceo qe fut dit en cel assise ceo[28] fut inpertinent [29]e par consequent il noiera[30] point[31] com en cas semblabel si jeo preng[32] vous averez uous fetez la deliverance jeo avowe

[1–2] et *ð*. [3] G. *ð*. [4] deiua *ð*. [5] *ð adds* qi fut feffe en la forme. [6–7] *ð omits*. [8–9] par vertue de ceo reles Ricard sattorna a Willem et mourust seisi bastard sanz heir ou Willem com chief seignour entra com en sa eschet *ð*. [10] jurours *ð*. [11–12] desicom troue fut autre foitz qe T. *ð*. [13] igist *ð*. [14–15] cesti bref par vertue dune assise de nouel disseisine et demandoms *ð*. [16–17] une verdit dun assise de nouel disseisine qest de si bas nature nous deiuent barrer daccion en cesti bref qest si haut *ð*. [18] *ð omits* si. [19] *ð adds* et. [20–21] etc. et la chose plede par partiez esteauntz en propre persone ou troue fut etc. jugement *ð*. [22–23] deit dire si noun verdit *ð*. [24] *ð adds* et. [25–26] saunz garranti et *ð*. [27] nient *ð*. [28] qe *ð*. [29–31] ne nous deit point en ceste bref nuier *ð*. [30] grantra *is interlined above* noiera. [32] preigne *ð*.

granted the services of the said Richard to W. Grandison ; and by virtue of this grant Richard attorned himself to William by his homage and fealty. Afterwards Richard died without heir of his body, and he was a bastard. Consequently William Grandison, as lord, entered upon these tenements as upon his escheat. Thereupon came this same [Frank] and ousted him. William brought the assize, where Frank, in his plea, set out his title, as he sets it out here, saying that Richard[1] his ancestor gave these tenements to one Richard in fee tail, and that upon the death of Richard without heir [the donor] entered upon his reversion etc. And William, in setting out his title there, said that the donor could not enter as upon his reversion, seeing that this same G. during the seisin of the said Richard released and quitclaimed all the right which he, G., had in the tenements to the said Richard and his heirs to hold the same of the chief lord of the fee by the services etc. That same [chief lord] granted these services to etc. *as above*, and [Richard] attorned himself *as above* and died seised, and he was a bastard and without heir of his body. Whereupon William entered *as above*, and he was seised until Frank disseised him etc. The assize came and said after the manner of William's saying, so that William recovered his seisin after view by the jurors ; and we ask judgment whether by a formedon in the *reverter* you can demand aught in these tenements, seeing that a jury has previously found that G., from whom you allege your title, released and quitclaimed, during Richard's seisin, all the right he had in them, by the effect of which release the right was extinguished in Geoffrey's person.

Toudeby. Frank brings this writ of formedon in the *reverter*, which is a writ of right given by the ancient law, which in the circumstances of his case is the only writ of right that would lie here ; and they want to bar our action by the verdict of an assize of novel disseisin. Judgment whether by the verdict of such an assize that is of so low a nature you can bar action under this writ that is of so high a nature.

Westcote. We ask judgment whether when a party to an assize sets out his title and pleads to the right, and thereupon the assize is charged and finds a certain fact in the presence of the parties etc.

Toudeby. The assize ought to say naught beyond finding a verdict as to the seisin of the freehold. If the assize inadvisedly[2] say aught in respect of the right, it is irrelevant to the plea and not of record. Consequently what this assize said is irrelevant and therefore it cannot prejudice us. Take a similar case. Suppose I seize your cattle. You

[1] An obvious mistake for Geoffrey. We have G. just afterwards.

[2] *Literally* in haste.

la prise &c. pur ceo qe jeo les trovay en mon several damage fesaunt vous ditez qe en vostre comune [1]prest &c. Lenquest vint[2] & dit qe en vostre comune vous nauez [3]gaine vostre comune par ceo nent plus en assise qe parle en le droit &c.[4]

[5]*Fresq.* non est simile le plee ne fut mie a recoverir comune enz fut a recoverir damages pur la torcenus prise mes en lassise le ple fut a recoverir la terre qe ore est en demande.

Toud. nous vous mustroms qe ceo qe lassise dit de droit outre la seisine de franktenement ceo fut impertinent al plee & nous ne doit noer car par ataint ne poms james de cel verdit aver recoverir donke il covent qe nous eyom recoverir par cesti bref car par ataint ne mie jeo vous prouef qe si une ataint seit porte sur une assise de novel disseisine & die qe en droit qe il emparlerunt del droit qe il feseint faus serment & pus dient sur altres poins qe la partie de title qe la partie fit en plee pledant il feseint faus serment & pus au dreine il referunt & diunt qe sur la seisine il feseint bone serment il ne seront mi atains sanz ceo qe il diunt qe il feseint faus serment sur[6] la seisine del fraunktenement par quai il pert qe totes eschoses qe il diunt horspris de seisine de fraunktenement est sanz garant e nemie de la force du plee mes inpertinent par quay nous demandoms jugement si par tel verdit nent del force del plee enz sanz garant nous dait a cesti bref de droit anuer.

Et furunt les parties ajournes tank al Lundy prochein apres la feste de nostre dame.[7]

Roise[8] dit qe el tent la terce partie del maner en dower qe est en demande del dowement Richard son baron & prest &c.[9] de attorner a qi qe la courte agardera qe attorner deit.

A quel jour le plee fut reherse com devant & dit

Malberthorpe si nous [10]fusoms en un bref de droit e nous tendisom sute & dereyne[11] ceo qe il unt dit ne serra mie respons a nostre sute ne

[1–2] pus vint lenqueste *δ*. [3–4] gaigne ia le plus toust comune nient plus en assise qe parle de droit *δ*. [5] From here to [7] *δ* reads :—

Frisk. Nest pas semblable. En plee de pris des auers ne fut nul plee des recouerir comune mes en assise fut plee de recouerir terre pur quei etc.

Toud. Ieo vous proue ceo qe lassise dit del droit outre le franctenement est inpertinent au play et pas nous deit nuire qar par atteint nauerons jammes par ceo verdit recouerir. Ieo le vous profe qe si un atteint seit porte sur un assise de nouel disseisin et dit qe en droit de ceo qil enparlerunt del droit il fesoint faux serment et pus dient qe les autres pointz sur le title qe la partie fesoit enpledaunt il fesoint faux serment et pus referent et dient qe sur lassise de franctenement est saunz garranti et nemy de force de plee enz inpertinent pur quei nous demandoms jugement si tiel plee nent de force de plee einz sanz garranti de plee nous deit a cel assise nuyre.

Et furent aiournez les partiez anqe a Joedi apres la Nativite de nostre Dame.

[6] The reporter originally wrote *de*, then marked it for erasure and interlined *sur* above it. [8] *δ adds* vers qi lun *precipe* fut porte. [9] est *δ*. [10–11] en un bref de droit tendissoms sute et desreignissoms *δ*.

deliver them. I avow the taking etc. by reason of my finding them doing damage within my severalty. You say that they were in your common, and that you are ready etc. The inquest comes and says that they were in your common, but this finding does not vest a common in you. And, similarly, no more does an assize that speaks of the right etc.

Friskeney. The cases are not parallel. The plea [in the case you suppose] was not to recover a common, but to recover damages for wrongful seizure; while in the assize the plea was to recover the land that is now in demand.

Toudeby. We are showing you that what the assize said of the right, outside the question of the seisin of the freehold, was irrelevant to the plea, and ought not to prejudice us; for as we can never recover by attainting that verdict, we ought, consequently, to be able to recover by this writ, for by attaint I contend that we cannot. For if an attaint be brought against an assize of novel disseisin, and it find that the assize made false oath in respect of what it said about the right, and further find that the assize made false oath in respect of other points raised by the party in his pleading, and then, lastly, they find and say that it made true oath in respect of the seisin, then in these circumstances I maintain that the assize cannot be attainted, but only when the attaint says that they made false oath in respect of the seisin of the freehold. Whence it appears that all the assize said beyond their finding as to the seisin of the freehold was *ultra vires* and of none effect and irrelevant. And therefore we ask judgment whether we ought to be prejudiced in this writ of right by such a verdict that was irrelevant to the issue and *ultra vires*.

And the parties were adjourned to the Monday next following the Feast of Our Lady.

Roesia[1] says that she holds the third part of the manor that is in demand in dower of the endowment of Richard her husband, and that she is ready etc. to attorn to whomsoever the Court shall adjudge that she ought to attorn.

And upon that day the pleadings were rehearsed as previously, and *Malmerthorpe* said: If we were in a writ of right and tendered suit and deraigned what they said, there could be no answer to our suit; nor,

[1] Roesia was Richard Scoland's widow. See the report of the *Attaint* in vol. I, pp. 158 *et sqq.*

par consequens a cesti[1] qe ceo est un bref de droit de auncien lay [2]altre bref ne git.[3]

Toud.[4] ou nous averom nostre recoverir par ataint ou par cesti bref mes par ataint ne mie qar si les xxiiii. venisent & daisent qe del reles il feseint faus serment mes de la seisine de franktenement il feseint bon serment[5] issint naverom mie recoverir par ataint [6]ne par aultre bref ne pom recoverir en ceo cas & a[7] nous barrer de cesti bref [8]unt alegge[9] un recoverir[10] en assise qe ne put ester mes sur la seisine de fraunktenement solom la nature de assise qe point ne barrer de cesti bref de droit par quay nous demandoms jugement [11]tut outrelment de defens com noun defendus.

Spigurnel vous daisez ben Gilbert si lassise ut dit plein verdit seissi & disseisi mes il conterunt tut la verite sur quay les justices agarderunt la disseisine par quay si lataint dit qe il unt feat fauz serment com del reles asset est lassise ataint qe donke ne fut mie W. disseisi.

Toud. unquor pount il dire qe il fut disseisor & assigner altre cause.[12]

Stantone de pus qe la quiteclamance[13] ne fut mie plede en curt [14]par les parties[15] ne mis avant en curt enz solement lassise[16] de sa teste demene parla de cel reles il sembel qe ceo fut inpertinent.

Pass. W. de G. ne [17]covenendra altrement[18] pleder qar il navoit[19] altre chose a pleder [20]mes qe celi qe morust[21] fut son tenant &[22] avoit fee pure & en evidence de ceo la si parla il de un reles mes le reles ne pout mie mettre [23]avant en barre qe il ne fut mie[24] partie a trier ceo reles par quay il ne poeit altrement user ne altrement pleder.[25]

Et fut ceo plee ajourne[26] outre a un altre jour [27]a quel jour[28] Frank fut non sui [29]par quai[30] &c.

[31]IV.

Forme de doun en le Reuerti.

Franke de Scolande porta son breve de forme de doun en le reuerti vers William de Grantsoun et demanda un mees et xviij. acres de terre

[1] *δ adds* bref. [2–3] ou en tieu cas nul autre bref de droit ne ygist *δ*. [4] *δ adds* ad idem. [5] *δ adds* et assignassent autre cause. [6–7] ne autre ne pomus user en ceo cas et pour *δ*. [8–9] autre rienz ne alleggez mes *δ*. [10] *δ adds* qe se fist. [11–12] etc. Mes la verite sur quei Justices agarderent disseisine fut le relees par quei si latteint die qil unt fet faux serment de le relees assetz est lassise atteint a donqe ne fut W. pas disseisi il ne poeit dire qil fut disseisi et assigner autre cause *δ*. [13] relees *δ*. [14–15] *δ omits*. [16] seisine *δ*. [17–18] pout en autre manere *δ*. [19] *δ adds* mester. [20–21] qe mostrer qe celly qe *δ*. [22] *δ omits*. [23–24] en court pur ceo qil ne poit estre *δ*. [25] *δ adds* qil ne fesoit. [26] arenee *δ*. [27–28] *δ omits*. [29–30] *δ omits*. [31] Text of (IV) from *γγ*.

consequently, can there be here, for this is a writ of right of the ancient law, and no other writ would lie.

Toudeby. Recovery may be had either by way of attaint or by this writ. But by attaint we cannot recover; for if the four and twenty came and said that the assize had made false oath touching the release, but had made true oath touching the seisin of the freehold, we could not then recover by attaint; nor can we, in this case, recover by any other writ; and to bar us from this writ they have alleged a recovery by an assize, which could only, by the nature of the assize, determine the seisin of the freehold, and cannot bar us from this writ of right. Wherefore we ask an immediate judgment on the ground of non-defence.

Spigurnel J. What you say, Gilbert, would be well enough if the assize had simply found a verdict of seised and disseised, but they found the truth of certain facts, upon which facts the Justices gave judgment of disseisin. Consequently, if an attaint should now say that the assize made false oath touching the release, the assize would be sufficiently attainted for you to have judgment that W. was not disseised.

Toudeby. I repeat that they can say that he was a disseisor and assign some other cause.

Staunton J. Since the quitclaim was not pleaded in Court by the parties, nor was *profert* made of it in Court, but the assize only went out of its way to speak it, it seems that it was irrelevant.

Passeley. W. G. could not plead otherwise, for he had naught else to plead other than that he that died was his tenant and had a fee simple; and in proof of that he spoke of a release; but he could not make *profert* of that release in bar, as he was no party to it; and consequently he could not plead it nor use it otherwise than he did.

And this plea was adjourned over to another day, on which day Frank was nonsuited. Wherefore etc.

IV.

Frank Scoland brought his writ of formedon in the *reverter* against William Grandison, and demanded a messuage and eighteen acres of

Formedon in the *reverter.*

etc. de la seisine G. le fitz G. de Scolande qi ceux tenementz dona a Richard de Scolande et a les heirs de son corps engendrez et pur ceo qil deuya sauntz heir de son corps engendre reuertist etc. a G. de G. a F. de Scolande de F. a Thomas cum a frere etc. de T. a F. qi ore demande.

Stonore. bien est verite qe lez tenementz furent ascun temps en la seisine G. le fitz G. de Scolande qi ceuz tenementz tyent en la maner de K. de Sire Otes de grantson ly qel G. dona ceuls tenementz a Richard de Scolande et a les heirs de son cors etc. et une purparlaunce fut entre eux dun mariage issint qe cesti Richard ne se voleit assentir si G. ne ly voleit relesser xx. marcs de Rente dount mesmes lez tenementz furent charges vers luy ensemblement oue la revercion de mesme lez tenementz qi luy fut regardant le qel G. en sa seisine relessa a luy etc. pur quei le droit de la revercion fut atteynt issint qe Sire Otes de Grantsone granta les services issauntz de tenementz auantdits a Sire W. vers qi etc. par qel grant Richard se attorne com tenant de fee et de droit et pur ceo qe Richard morust bastard sauntz heir de son cors Sire William de Grantson entra en les tenementz cum en sa eschete et cesti Francke luy osta pur quei Sire William porta lassise de nouel disseisin lan du Rengne etc. deuant le Roy cy en Cantebirs ou Francke vynt et dit qe Sire William a tort porta cest assise et sey fit title par Resoun de reuercion etc. *ut supra* et pleda a lassise ou lassise vynt et dit coment G. son auncestre auoit relesse le droit de la Reuercion etc. et qe W. de Grantson fut etc. tant cum sa eschete cy la etc. pur quei fut agarde qe Sire W. recouera sa seisine et demandoms jugement desicum troue fut par ceo verdit et par le plede Franke qe le droit de la reuercion fut defait par la quite claym si a ceo droit qe fut esteynt par jugement et par lassise et lestat William afferme bon puissetz rien demander.

Toudebi nostre bref est un bref de droit ly qel bref auxi haut poums user en le droit en sa nature cum ascon bref de droit dount par recouerir qe se fit assise de nouel disseisine le qel recouerir ne put estre plus haut qe franctenement par ley de terre ne poetz vous de nostre bref de droit qi est si haut en sa nature daccion barrer pur quei nous demandoms jugement de vous cum de noun defendu.

Westcote conisset donqes qil yauoyt tiel recouerir et pus dites pur quei il ne vous deit greuer.

land etc. of the seisin of G. the son of G. Scoland, who granted these tenements to Richard Scoland and the heirs of his body begotten. And because Richard died without heir of his body begotten the tenements reverted etc. to G.; from G. they descended to F. Scoland; from F. to Thomas as brother etc.; from T. to F. the present demandant.

Stonore. The truth is that the tenements were aforetime in the seisin of G. the son of G. Scoland, who held these tenements in the manor of K. of Sir Otho Grandison. The aforesaid G. granted these tenements to Richard Scoland and the heirs of his body etc.; and there were negotiations between them touching a marriage, to which this Richard would not consent unless G. would release to him the rent of twenty marks with which these tenements were charged, together with his reversionary rights in them. And the said G., during Richard's seisin, released to him etc., whereby the right to the reversion was extinguished, so that Sir Otho Grandison granted the services issuing from the tenements aforesaid to Sir W. against whom etc. In virtue of which grant Richard attorned as tenant of the fee and right; and because Richard, that was a bastard, died without heir of his body, Sir William Grandison entered upon the tenements as upon his escheat, and this Frank ousted him. Whereupon Sir William brought an assize of novel disseisin in the year of the reign etc. before the King here in Canterbury, before which Frank came and said that Sir William wrongfully brought such assize, and he claimed to be entitled by reason of the reversion etc. *as above*; and he pleaded to the assize. And the assize came and told how G. his ancestor had released his right to the reversion etc., and how W. Grandison had entered etc. as upon his escheat etc. Whereupon judgment was given that Sir W. recover his seisin. And, seeing that it was found by that verdict against Frank's plea that the right to the reversion had been extinguished by the quitclaim, we ask judgment whether you can demand aught through a right which was declared both by judgment and by the assize to have been extinguished, while the estate of William was confirmed.

Toudeby. Our writ is a writ of right, which is a writ of the highest possible nature, and we claim to use it as such. The recovery that was got through the assize of novel disseisin cannot, by the law of the land, be a recovery of aught higher than a freehold, and by such a recovery you cannot bar our action under a writ which is of so high a nature. Wherefore we ask judgment of you as making no defence.

Westcote. Admit, then, that such a recovery was gotten, and then show why it should not bar you.

Toudebi. nous sumus en ley de tere la quel il yauoyt tiel ou ne mye ceo ne nous deit greuer et demandoms jugement *ut supra.*

Item en un Replegiare si vous en vostre seueral auowetz pur damage fesaunt ieo dye qe ma comune prest etc. et vous le tranuerses com en vostre seueral quidetz vous par tant a recouerir ou a pleder comune nanyl forsqe taunt soulement damage et ceste la nature de plee auxi par de cea en assise de nouel disseisine il nad plus haut a recouerer forsqe franctenement.

Fris. en un Replegiare pur damage fesant la comune nest mye en plee forsqe tansoulement a damage recouerir pur un tort mes en assise de nouel disseisin la tere est a recouerir et la tere est en plee.

Malm. tut soyt ceo tere a recouerir ceo nest forsqe franctenement dount nostre accion est a recouerir fee et droit qe ne chiet pas en recouerer dassise.

Hert. par verdit dassise la ou franctenement ceo auoyt fet title pur sa tenance sauuer par droit de Reuercion apres G. son auncestre sy come il fait ore par voye daccion le qel title par ceo verdit fut defait et de Reuercion par la quiteclaim qi fut troue solom le verdit le droit de la Reuercion anenty pur quei nous demandoms jugement si en countre le recouerir qe proue lor estat estre defet puissent accion auer.

Spigurnel coment put lor droit estre anenty par tiel verdit desicom il furent chargez solom la disseisine.

Malm. par verdit qe ceo fit sur la quiteclaim ne pount il nostre estat estat defaire qar ele ne fut mye mys auant a la court ne par nule des parties grante ne dedit forsqe soulement en euidence suffit fut pur quei cel verdit etc.

Spigurnel assise de nouel disseisin puet estre plede en diuerse manere et solom le plee des parties poet ele passer dont en tant com il dient qe franctenement se fit title de la Reuercion de qi print puet sa accion le qel par verdit dassise fut troue nul et anenti coment poetz vous de cel estat anenti accion auer.

Toudeby. We are bound by the law of the land,[1] which is such that [the recovery] should not bar us ; and we ask judgment *as above.*

Further, if in a *replegiare* you avow [that the cattle were seized while] committing damage in your severalty, and I say that I am ready to aver that it is my common etc., and you traverse by replying that it was your severalty, do you suppose that I could recover a common by such a plea ? Certainly not, but merely the sum in which I was endamaged. So here. In an assize of novel disseisin you cannot recover aught higher than a freehold.

Friskeney. In a *replegiare* for *damage faisant* the common is not in issue, but is only pleaded for the purpose of obtaining damages for a tort ; but in an assize of novel disseisin recovery of the land is sought and the land is in issue.

Malmerthorpe. Granted that recovery of the land was being claimed, yet it was only of the freehold ; and our action is to recover the fee and right, and these do not come within a recovery by assize.

Hartlepool. Frank claimed to recover by verdict of the assize a freehold tenancy, and he based his title to such tenancy upon his right to the reversion after the death of his ancestor G., as he does now in this action. That claim was declared invalid by the verdict on the ground that Frank's right to the reversion had been extinguished by the quitclaim which the jury found had been executed by G. By reason of all this we ask judgment whether Frank can have an action in face of William's recovery, which recovery established the invalidity of Frank's title.[2]

Spigurnel J. How can Frank's title in the right be destroyed by the verdict of such an assize, that was charged to find a verdict on the question of disseisin ?

Malmerthorpe. We cannot be deprived of our estate by a verdict that was found in respect of a quitclaim of which *profert* was never made in Court, and which was never either admitted or denied by any of the parties, but was merely allowed to be mentioned in the evidence without objection taken. Wherefore this verdict etc.

Spigurnel J. The issue in an assize of novel disseisin may be one of many kinds ; and the verdict will follow the pleading of the parties. Now, since Frank based his title to the freehold upon the reversion, and that reversion was found by verdict of the assize to have been extinguished and to have become of none effect, how can he base any right of action upon an estate that has been found to be non-existent ?

[1] *Ley de tere* is the ancient common law as opposed to statute.

[2] This appears to be the sense of *Hartlepool's* speech ; but the text here, as well as in other parts of this report, is so corrupt that anything like an exact translation is impossible.

Malm. nostre title ne put estre defet par lor verdit pur ceo qele ne fut myse auant en barre de nostre title qe nous feymus taunsoulement pur nostre tort escuser qe a tort porterent il ceste assise.

Spygurnel le title fut pur vostre tenance sauer.

Toudebi vous nestis pur le recouerir forsqe a chaser nous a nostre atteynte et oster nous de cesti bref mes si nous portassoms latteynte et troue fut qe nostre title fut verrey et laquitance qe fut afferme par lassise fut nule qe nous recouerames par tant vers vous qar noun pas franctenement pur ceo qe lateynte serra charge sour la disseisine qest la nature del assise pur quei il semble par mesme la reson qe ceo verdit dassise nest a prendre forsqe sur la disseisine et ne mye sur la fait.

Westcote si par tiel verdit troue fut qe le tenaunt naueit mye disseisi le seygnour de qi il tent et dit outre qe le droit ne demoura my en la persone le tenant par cel quitance et le seygnour recouerisit par echete etc.

Herui. agarde vos jours le jody apres la etc.

Et puis furent noun suwytz et porterent la atteynte.

[1]ANON. *v.* ANON.

Fourme de doun ou celz en le descendere fut resceu al averrement countre le fet le donour pur ceo qil ne fut prive al donour secus est en le Reverti quia heres.

En un bref de fourme de doun en le descendre—

Caunt. quei avez de la fourme.

Bacoun. prest etc.

Caunt. al averrement ne devez avenir kar celui Johan de Hamptone qi vous dites qe seisi fut et dona il avoit a noun Johan de Iktone[2] et conu par lun noun et par lautre et dona les tenemenz a celui A. qy soun bref suppose en fee simple jugement si encountre cest fet devez al averrement avenir.

Caunt [sic].[3] Il nest paas partie a la chartre qe vous mettez avaunt qil nest paas heir le donour estoyse laverrement mes en le bref de fourme de doun en le reverti il serreit chace a respoundre au fet.

[1] Reported by *α*, *αα* and *β*. Text from *α* collated with *β*. The note in *β* is :—Forme de doune en le descendre ou lissue en le descendre fust receu de averer qe un tiel fust seisi et dona sanz fet qe testmoigna. [2] Skettone *β*. [3] This speech should probably be attributed to *Bacon*.

Malmerthorpe. Our title cannot be defeated by their verdict, for the quitclaim was never put forward in bar of the claim which we made, but was merely used as an excuse for the wrong done us, for wrongfully was the assize brought.

SPIGURNEL J. The title [affected by the verdict of the assize] was your title to the tenancy.

Toudeby. You can effect naught by the recovery except to drive us to our attaint and to oust us from this writ. If we should bring an attaint and it should be found that our title was a good one, and that the quitclaim which the assize said had been executed never was executed, then, to such an extent, we should recover against you, but [we should] not [recover] the freehold; because the issue with which the attaint would be charged would be the disseisin, which was the natural issue before the assize. Wherefore, for like reasons, it would seem that this verdict of the assize decided only the question of disseisin, and not the fact [of the right].

Westcote. If it were found by such a verdict that the tenant had not disseised the lord of whom he held, and it was said further that the right was not in the person of the tenant by virtue of the alleged quitclaim, the lord would recover as his escheat etc.

STAUNTON J. Keep your day on the Thursday after etc.

And Frank was afterwards nonsuited, and brought the attaint.[1]

ANON. *v.* ANON.

Formedon in the *descender* where the issue in the descender was received to aver against the deed of the donor as he was no party to it. Secus in formedon in the *reverter*, for the heir is a party.

In a writ of formedon in the descender.

Cambridge. What have you in proof of the form?

Bacon. Ready etc.

Cambridge. You ought not to be received to aver, for this John of Hampton that you say was seised and granted was also called John Skelton, and he was known by both names. He granted the tenements to this A. of which your writ supposes he had the fee simple. Judgment whether you ought to be allowed to aver against this deed.

Bacon. The demandant is no party to the charter which you produce, for he is not heir to the donor. The averment must stand. But in a writ of formedon in the reverter he would have been compelled to answer the deed.

[1] See Vol. I, pp. 158–184.

[1]ANON. *v.* EUESQE DE HEREFORD.

Fourme de doun.

Un Johan et Sarre sa femme porterunt lour bref de fourme de doun uers Richard Euseqe de Hereford et dit qe un Richard dona les tenemenz a Piere Sarra a lui et a ses heirs de soun corps engendrez. Et les queux apres sa mort a lauauntdit Sarre com a filie et heir descendrent etc.

Stonore. Conge dacorder. La pees est icele a voz congez qe Richard Euesqe conust les tenemenz contenuz en le bref est le dreit Sarre. Et pur cele reconusaunce Johan et Sarre grauntent mesmes les tenemenz a Richard etc. et a ses heirs a tenir de chief seignourage de fee par les seruices dues des tenemenz et Johan et Sarre et les heirs Sarre garraunterent etc.

Spigurnel. Viegne Sarre qe fut examine ceux tenemenz sunt du dreit Sarre en fourme taillie auxi com le bref suppose et si dieu plest nule fin ne serra leue des tenemenz en forme taille qe statut voet quod si finis etc. et nous ne resceiueroms nule dount nous sumes ascerte qe peut estre pour nule et si ele voleit prendre ele ne serreit pas resceu par quei pledez si vous volez.

Stonore. Donqe vous dioms nous qe soun pere nauoit rien en les tenemenz demaundez du doun Richard com soun bref suppose prest etc. et alii e contra.

Note from the Eyre Roll.

The demandants, according to the Roll, were Nicholas of Oxford and Christina his wife. They claimed certain lands which they counted that ' Henricus de la Felde Stephanus et Robertus fratres eius dederunt Roberto le Orfeure in librum maritagium cum Johanna filia Simonis de la Felde et que post mortem predictorum Roberti le Orfeure et Johanne prefate Cristine filio (*sic*) et heredi eorundem Roberti le Orfeure et Johanne descendere debent per formam donacionis predicte etc.'

[2]NOTA.

Nota qe en un bref de forme de doun le tenant vocha a garaunt un enfaunt dedenz age e la parole demurra sauns iour taunt qe a lage lenfaunt : teste Joh. de Criol : secus en bref de dower et est racio pur ceo qil deit meintenant garantir set non in aliis placitis.

[1] Reported by α only. [2] Note from β, γ, δ, θ. Text from β.

ANON. *v.* THE BISHOP OF HEREFORD.

Formedon.

One John and Sarah his wife brought their writ of formedon against Richard Bishop of Hereford; and they said that one Richard gave the tenements to Sarah's father and to the heirs of his body begotten. And after his death the tenements descended to the aforesaid Sarah as his daughter and heir etc.

Stonore. Leave to settle. The terms of the peace will, by your leave, be that Bishop Richard[1] recognizes that the tenements named in the writ are the right of Sarah. And in consideration of this acknowledgment John and Sarah grant the same tenements to Richard etc. and his heirs, to hold them of the chief lord of the fee by the services due from the tenements; and John and Sarah and their heirs will warrant etc.

Spigurnel J. Let Sarah come—She was examined—These tenements are the right of Sarah, as the writ alleges, in fee tail; and no fine, please God, shall ever be levied in respect of tenements held in fee tail, for the Statute[2] says that if a fine [be levied hereafter upon such lands it shall be void in the law]; and we will never allow any fine which we know can be set aside; and if she wished to levy a fine she would not be received to do so. So plead if you wish to do so.

Stonore. Then we tell you that her father had naught by Richard's gift in the tenements in demand as their writ alleges. Ready etc.

And thereupon was issue joined.

Note from the Eyre Roll—*continued.*

The bishop's plea, upon which issue was joined, was:—quod predicti Henricus Stephanus et Robertus fratres ejus nunquam dedit predicta tenementa predicto ut Nicholaus et Cristina dicunt.

The jury returned a verdict in accord with the bishop's plea; and the court gave judgment that Nicholas and Christina should be in mercy for their false claim.[3]

NOTE.

Note that in a writ of formedon where the tenant vouches to warranty an infant within age the hearing will stand over without day assigned until the infant attain his age—this on the authority of John Criol. But it is otherwise in a writ of dower, and the reason for this is that the infant should in such a plea warrant at once, but not in other pleas.

[1] Richard de Swinefeld held the See of Hereford 1282–1317.

[2] Statute of Westminster II, cap. i.

[3] *m.* 66*d.*

GARANTIE.

[1]NOTA.

Nota qe la ou le tenant voucha a garantir en bref de possession et le garant perde tous les damages cerunt sur le garantor et ne pas sur le tenant ut patuit in itinere Kancie &c.

[2]ANON. *v.* ANON.

En ple de terre le tenant vocha a garantir un B. qi vynt en Curt e garanti e vocha outre un C.—C. vynt en curt e demanda par quei il le voloit lie a la garantie mes cel jour plus ne fust fet. Lendemeyn les partyes furent demandees. Le demandant vynt e C. qi fust dereyn voche mes B. qi avoit voche C. ne vynt point.

Spigurnel le tenant vocha B. qy vynt en Curt e garanti e vocha outre C. qy vynt en Curt e demanda par quei il le vocha e il ne vient par ore de meyntenir son vocher ne il ne ad mye jour par prefixion pas quei vous pussoms agarder le petit cape eynz est departy en despit de la curt par quei agarde la curt qe le demandant recouvere sa seisine vers le tenant e le tenant vers B. a la value e C. a dieu sanz jour.

[3]NOTA.

[4]Nota en un vocher avant qe le voche veigne en court le tenant purra pleder en chief si le voche ne veigne sa terre serra pris en la main le Roy.[5]

Nota en voucher.

La ou le tenant vouche a garaunt en plee de terre avaunt qe le voucher veignie en court il puet resortir de soun voucher et pleder en chief kar avaunt ceo qe [le] vouche soit entre en la garauntie le tenaunt nad pas mis soun respounse en la bouche le vouche kar si le vouche face defaute avaunt qil eit apparu en court le *cape ad valenciam* istra de prendre de la terre le vouche etc.[6] nemie de la terre demaunde kar apres qil est entre en la garauntie si est il tenaunt par sa garauntie de la terre demaunde ut patuit in itinere Cancie etc.

[1] Note from *δ*. [2] Reported by *ϵ* only. [3] Note from *α*, *αα*, and *β*. Text from *α* collated with *αα* and *β*. [4]–[5] from *αα* and *β*. [6] *β adds* e.

WARRANTY.

NOTE.

Note that where the tenant vouches to warranty under a possessory writ and the warranty fails, all the damages shall be payable by the warrantor and not by the tenant; as was ruled in the Eyre of Kent etc.

ANON. *v.* ANON.

In a plea regarding land the tenant vouched to warranty a certain B. who came into Court and warranted and vouched over one C. C. came into Court and demanded the ground upon which B. held him to warranty. Nothing further, however, was done that same day. On the following day the parties were called. The demandant came, and also C. that was latest vouched; but B. that had vouched C. did not come.

Spigurnel J. The tenant vouched B. who came into Court and warranted and vouched over C., who came into Court and demanded the ground on which B. vouched him. B. does not now appear to maintain his voucher; and as no day was assigned for his appearance we cannot issue the petty *cape*. But he has absented himself in contempt of the Court, and the Court therefore gives judgment that the demandant recover his seisin against the tenant, and the tenant the value against B., and that C. freely depart without day assigned.

NOTE.

Note that in a voucher the tenant may plead in chief before the vouchee come into Court; and if the vouchee do not come his land shall be seized into the King's hand.

Where in a plea touching land the tenant vouches to warranty he may, before the warrantor comes into Court, relinquish his voucher and answer in chief; for until the warrantor has actually warranted the tenant has not made his answer through his mouth; and if the vouchee defaulted before he appeared in Court the *cape ad valenciam* would issue to take the land of the vouchee etc. and not the land demanded etc.; for after he has warranted he is tenant by his warranty of the land in demand; as appeared in the Eyre of Kent etc. Note of voucher.

[1]NOTA.

Nota daverrement de statut.

Nota qe si le tenaunt vouche a garantie [e] le demaundaunt tende daverrer qe le vouche ne nul de ses auncestres avoient unqes rien en les tenemenz demaundez puis la seisine celui de qi seisine il demaunde e lenqueste se joignie entre eux qe die qil navoit [2]rien etc. le tenaunt perde seisine de terre et si lenqueste die qil avoit [3]ne serra autre chose forsqe il[4] garauntira au tenaunt pur ceo qe lenqueste fut en delaiaunt lui mesmes de sa demaunde et bien list a lui mesmes a delaier sa demaunde : ut in eodem itinere.

[5]NOTA.

Voucher ou le baroun et la femme furent vouchez et le baroun fit defaute apres defaute et la femme fut resceue [6]a defendre son dreit.[7]

Un bref fut porte vers un tenaunt qe voucha a garaunt un homme et sa femme le baroun fit defaute apres defaute la femme vint avaunt jugement rendu sur la defaute et pria estre resceu a defendre soun dreit saver dentrer la garantye et pleder ove le demaundant et fut resceu ut patuit devant[8]

Sire Hervi qe [9]dit qe[10] assez fut ele en caas de statut kar le demaundant fut en point davoir rescoveri vers le tenaunt et le tenaunt vers soun garaunt saver vers le baroun et issi perdreit ele sa tenaunce par la defaute le baroun etc.

[11]NOTA.

Si un homme soit vouche et countreplede le vocher et die chose qe chiet en ley et demaunde jugement si garauntir deive tut seit agarde qil garauntisse il ne perdra mie mes garauntira et pledra outre tut voille statut qe la ou le vouche countreplede la garauntie et soit convicte qil devie garauntir qil perde kar le plee ne pent mie longement et statut parle[12] ou le plee pent longement saver qe enqueste se joigne entre le tenaunt et le vouche etc.

[1] Note from *a*, *aa*, *β*. Text from *a* collated with *β*. [2–3] *β omits*. [4] le garaunt *β*. [5] Note from *a*, *aa* and *β*. Text from *a* collated with *β*. The head-notes in *aa* and *β* are almost identical with that in *a*. [6–7] *from β*. [8] *β omits*. See the two cases of *Wellington* v. *Brockwell* (pp. 149 and 153 *supra*), and the case of *Wybert* v. *Hore* (p. 163). [9–10] *β omits*. [11] Note from *a*, *aa* and *β*. Text from *a* collated with *β*. [12] *β adds* la.

NOTE.

Note that if the tenant vouch to warranty and the demandant be ready to aver that neither the vouchee nor any ancestor of his ever had aught in the tenements in demand since the seisin of him upon whose seisin he relies, and if inquest be joined between them [upon this issue] and it find that he had naught etc. then the tenant shall lose his seisin of the land ; but if the inquest find that he had [an estate in the land] it shall decide nothing further, except that the vouchee shall warrant the tenant ; for the inquest was in delay of the demandant's demand, and a demandant is fully entitled to delay his own demand : as appears in the same Eyre.

Averment under the Statute.

NOTE.

Voucher where husband and wife were vouched, and the husband made default after default and the wife was received to defend her right.

A writ was brought against a tenant who vouched to warranty a man and his wife. The man made default after default. Upon his default and before delivery of judgment the wife appeared and prayed to be allowed to defend her right, that is to say, to warrant and to plead against the demandant ; and she was received, in accordance with the previously reported ruling of

Sir Hervey Staunton J. who held that she came sufficiently within the Statute,[1] seeing that the demandant was on the point of recovering against the tenant, and the tenant against his warrantor, that is to say against the husband ; and then the wife would have lost her tenancy through the default of her husband etc.

NOTE.

If a man be vouched and counterplead to the voucher upon a point of law and seek judgment whether he is bound to warrant, though it be ruled that he must warrant yet shall he not lose, but he shall warrant and plead over, notwithstanding that the Statute says that when a vouchee counterpleads to the warranty and it is ruled that he must warrant he shall lose ; for the Statute contemplates the case where the plea goes to the main issue, to wit, where the issue is joined between the tenant and the vouchee ; and in the case supposed the plea does not go to the main issue.

[1] *Sc.* Statute of Westminster II, cap. iii.

[1]ANON. *v.* ANON.

[2]I.

Voucher a garaunt en ij. contez ou dit fut de la court qil ne serreit somouns qe lun conte qar sil perdast il avereit a la value en touz ij. contez sil navoit point assez la ou il fut somouns et a drein il acorderent qil serreit somouns.

En plee de terre le tenaunt voucha a garaunt un Richard qe devoit estre somounz en mesmes le conte et en le conte de Surrei pur ceo qil navoit paas terre sufficaunte en le conte de fere a la value en lun conte sil perdescit.

Hervi. Il ne serra somouns forsqe en lun conte kar sil fut somouns en lautre contee ceo ne serreit fors a delaier le demaundant de soun rescoverir mes si vous perdez la court vous eidra bien daver a la value de la terre en lautre contee si le vouche neit paas assez en ceste conte.

Bacoun. nous vouchoms en les deus contez a nostre peril qe sil le voille dedire nous ly voloms etc. et issi ne mis par malice a targer le demaundant.

Spig. vous naverez outre mes si vous perdez vous serrez de la court eyde *ut supra.*

Bacoun. [3]Si le vouche face defaute ne serra pris en la main le Roi si noun la terre en ceste conte et si jeo perdisse[4] jeo ne puisse aver a la value ci noun de la terre prise en la main le Roi par quei il covient etc.

Et puis al drein les justices accorderent qil fut somouns en lun conte et en lautre.

[5]II.

[6]Un homme porta un bref vers Laurence de H. et demanda certeinz tenemenz en B.[6] Laurence voucha un Richard qi serreit somouns en le Counte de Kent et de Surry issit[7] bref de somoundre le en le un Counte et en lautre et avoint iour a qeu iour le vicounte retorna[8] qil fut somouns en le Counte de Kent et nient en le Counte de Surry pur quei le demandant pria le *Cape ad valenciam* le tenant pria une somounce sicud[9] alias en le Counte de Surry.

[1] Reported by *a*, *aa*, *β*, *δ* and *ϵ*. [2] Text of (I) from *a* collated with *β*. The note in *β* is :—Vocher ou le voche avoyt terres en la conte ou le demande se fit e en autre conte e issi le voleit vocher en lun et lautre conte et dit fust qil ne dut vocher si non en lun conte ou le demande fut e a drein li vocha en lun e lautre. [3]–[4] si le voche perdisit *β*. [5] Text of (II) from *δ* collated with *ϵ*. [6]–[6] B. demanda certeins tenementz de Laurence de Huntyngfeld etc. *ϵ*. [7] fit *ϵ*. [8] repondist *ϵ*. [9] sicut *ϵ*.

ANON. *v.* ANON.

I.

Voucher to warranty in two counties where the Court thought that the vouchee should be summoned in one county alone, for if he lost and had not sufficient in the county where he was summoned he had sufficient in the two counties; but in the end they allowed him to be summoned.

In a plea of land the tenant vouched to warranty one Richard, who ought to be summoned in that same county and in the county of Surrey, because he had not land in the county sufficient to pay the value of the demand if he lost.

Staunton J. He will not be summoned save in the one county; for to summon him in the other county would only be to delay the demandant in his recovery. If, however, you lose, the Court will willingly assist you to recover the value of the land in the other county if the vouchee have not sufficient in this county.

Bacon. We vouch him in the two counties at our own peril. If he desires to deny it we are willing etc. so as not to delay the demandant of malice.

Spigurnel J. You will have no answer over, but if you lose you shall have aid of the court—*as above.*

Bacon. If the vouchee make default only the land in this county will be taken into the King's hand, and if I should lose I could have the value only of such land as had been taken into the King's hand; consequently we ought etc.

And afterwards, in the end, the Justices permitted him to be summoned in both counties.

II.

A man brought a writ against Laurence of H. and demanded certain tenements in B. Laurence vouched one Richard, who should have been summoned in the counties of Kent and Surrey. A writ was issued to summon him in both counties, and a day was assigned for appearance. Upon this day the Sheriff made return that Richard had been summoned in the county of Kent but not in the county of Surrey. Whereupon the demandant prayed the *cape ad valenciam.* The tenant prayed a summons *sicut alias* in the county of Surrey.

Spig. Le tenant ad vouche en lun Counte et en lautre et la somounce est meme[1] en ceste Counte pur quei le *Cape ad valenciam* istera ore par sa defaute en ceste Counte et sil neit assez en ceste Counte il perdra en lautre tut ne seit il illoqes somouns.

Cant. Ceo serreit a[2] prendre a la value de la terre ou il nest pas somouns.

Spig. Del houre qil est somouns [3]et la somounce tesmoigne[3] nous ne pomes nient delaier etc. qar assez est il garni.

[4]NOTA.

Ou piert qe si homme vouche en foreine counte en leir ou le voche ad asset en meme le counte il perdra seisine de terre.

Item si homme vouche en forein conte et le vouche eit assez en mesmes le conte le tenaunt qad issi vouche si perdra par ley de eyre pur ceo qil aad le forein vouche a delaier le demaundant encountre la nature dil eyre qe haste chescun : teste [5]in itinere Cancie coram Hervico de Stauntone.[5]

[6]NOTA.

Nota qen eyre si forein soit vouche il avera bref[7] de justices a sumoundre son garant.

GARANTIE DES CHARTRES.

[8]ANON *v.* COXTON.

[9]I.

Warrantia. [10]Jon de B.[10] porte bref de garauntie de chartre vers Richard de Coxtone[11] & counte qe a tort ne lui garaunte certeins tenementz &c & dit qe la ou il tynt de lui taunt &c [12]la vynt un Adam & porta assise de novel disseisine vers ly dount il vynt a lui & lui pria qil lui garauntisit il garantir ne voleit einz [13]ly suffry a perdre &c a tort e[13] a ses damages &c.[14]

[1] tesmoignee ϵ. [2] de ϵ. [3–3] ϵ *omits.* [4] Note from α, $\alpha\alpha$, β. Text from α collated with β. Head-note from β; $\alpha\alpha$ has in margin: Vocher ou homme put perdre sa terre par fol vocher en eire. [5–5] Hervico de Stantone in Kent β. [6] Note from α, $\alpha\alpha$, β. Text from α collated with β. [7] *from* β ; α *has* gar[nissement]. [8] Reported by α, γ, δ, ϵ, θ, and λ. [9] Text of (I) from γ collated with δ, ϵ and λ. [10–10] Un Johan ϵ. [11] from ϵ ; C. γ, δ ; B. λ. [12–14] ut supra etc. [*sic*] λ. [13–13] *from* ϵ ; &c. γ.

Spigurnel J. The tenant has vouched in the one county and in the other, and the summons is [witnessed] in this county [alone]. Consequently the *cape ad valenciam* will now issue by reason of his default in this county, and if he have not sufficient within this county he will lose in the other, although he was not summoned in it.

Cambridge. That would be to levy the value of the land in a county in which he has not been summoned.

Spigurnel J. Since he has been summoned and the summons has been witnessed, we cannot delay etc., for he has been sufficiently warned.

NOTE.

Where it appears that during the Eyre a man vouches one in some other county and such vouchee has sufficient in the county [wherein the Eyre is holden] the voucher shall lose seisin of his land.

If a man vouch in a foreign county and the vouchee have sufficient in the county [wherein the Eyre is holden] the tenant that has vouched him shall lose by the rule of the Eyre, because he vouched in a foreign county for the purpose of delaying the demandant against the principle of the Eyre which expediteth every man: *teste* Hervey of Staunton in the Eyre of Kent.

NOTE.

If one of another county be vouched in Eyre he shall have a writ from the Justices to summon his warrantor.

WARRANTY OF CHARTERS.

ANON. *v.* COXTON.

I.

John B. brings a writ of warranty of charter against Richard Coxton and counts that he, Richard, wrongfully does not warrant certain tenements etc.; and he says that while he was holding of Richard etc. there came one Adam that brought an assize of novel disseisin against him; and that thereupon he, John, went to Richard and asked him to warrant him, but he would not, and suffered him to lose etc. wrongfully and to his damage etc. Warranty.

Pas. qey avez vous de nous lier a la garauntie.

Cant. veez ci vostre fet qe voleit garauntir par qey il ne pout dedire qil ne dust garantir.

Spigurnel [1]nous veoms[2] qe[3] cest bref est done en lieu de voucher [4]mes qaunt homme vouche [5]& il soit garanti[5] & perde le tenant recovera a la valeur de terre[6] perdue [7]dount il covent recoverir mesme tiel en cesti bref qest done en lieu de voucher[8] coment qe homme counte par mi damages [9]en cesti bref.[9]

Et ceo dit il pur ceo qe acune gent feurent en oppinioun qe homme ne deust mie recoverir en cesti bref a la valeur de terre[10] perdue [11]en demene[12] mes soulement damages & dit qe ceo bref ne fust mie[13] de la nature de bref de covenaunt qar en bref de covenaunt ne doit homme mie recoverir terre [14]pur le terme[14] mes soulement damages.

Par qey agard la Curt qe Jon recovere vers Richard a la valeur de la terre perdue & soit enqueris de damages &c & Richard en la merci.

[15]II.

Garrantie de chartre porte pendaunt lassise le tenant perdit par assise et recoueret la garantie vers soun feffour pur quoi fut agarde qe le tenant recouerit a la value de la terre le feffour ratione quia le bref est done en lieu de voucher etc.

Un Henri porta une assise de novel disseisin vers B. pendaunt quele assise B. porta bref de garantie de chartre vers un C. B. perdi par assise et dereyna la garantie uers C.

Spigurnel. Asqune gent sount en awer le quel en ceo cas celui qe aad perdu recouera a la value de terre ou il recouereit damages pur la vaillaunce de la terre perdue mes pur ceo qe cesti bref est done en lieu de voucher et pur le voucher il recouereit a la value de la terre perdue. Et pur ceo qe vous ne poez dedire ceste garantie si agarde ceste court qe B. recouere etc. a la valiaunce de la terre et vous en la mercy et ses damages qi serront taxez par nostre discrecioun.

[16]III.

Un Geffrie porte son bref de garrantie de chartre vers un Thomas de Steper e dit qe a tort ne li garranti un mees &c e dit qil fust empleade

[1–3] Vous veez bien coment λ. [2] δ *adds* bien. [4–8] λ *omits.* [5–5] a garantir δ. [6] chos δ. [7–12] com terre pour terre δ. [9–9] λ *omits.* [10] la chose ϵ, λ. [11–12] com terre pour terre λ. [13] λ *adds* soulement. [14–14] δ *omits.* [15] Text of (II) from *a.* [16] Text of (III) from *θ.*

Passeley. What have you to show we were bound to warranty ?

Cambridge. Here you have your own deed promising warranty ; and so you cannot deny that you are bound to warrant.

Spigurnel J. We see that this is a writ given in lieu of a voucher. But when a tenant vouches and is warranted and loses he shall recover to the value of the land he has lost ; consequently by this writ, which is given in lieu of a voucher, he ought to recover the same amount, though he does not lay damages in counting under this writ.

And Spigurnel J. said this because some were of opinion that the value of land lost in demesne could not be got under this writ, but damages only ; and he said further that this writ was not of like nature with a writ of covenant, for under a writ of covenant a man could not recover his term in the land, but damages only.

Consequently the Court gave judgment that John recover from Richard the value of the land lost, and that there be an enquiry as to damages, and that Richard be in mercy.

II.

Warranty of charter brought during an assize. The tenant lost at the assize and recovered his warranty against his feoffor. Judgment was therefore given that he recover land of the same value from the feoffor, because this writ is given in lieu of voucher etc.

One Henry brought an assize of novel disseisin against B. ; during which assize B. brought a writ of warranty of charter against one C. B. lost at the assize, and established his right to be warranted by C.

Spigurnel J. Some there be that doubt whether in these circumstances the loser should recover land of the same value as that which he has lost or whether he should recover damages to the value of that land. Now this writ is granted in lieu of a voucher ; and by a voucher the tenant would have recovered [land] to the value of the land lost ; and so, seeing that you cannot deny this warranty, this Court gives judgment that B. recover etc. to the value of the land [lost] and that you be in mercy ; and that B.'s damages shall be assessed at our discretion.

III.

One Geoffrey brings his writ of warranty of charter against one Thomas of Staple and says that Thomas wrongfully did not warrant him in a messuage etc., and he says that he was impleaded in respect of

de mesme le mees par une assise de novel disseisine par quel assise il perd par defaute de sa garrantie a tort et a ses damages de v. *li.* Thomas conusait la garrantie et ne dedit pur quei Geffrie perde par assise.

Spigurnel ascun gentz sont en opinion qe qaunt home recovere par bref de garrantie de chartre qe le demandant recovera a la veroi value de la terre perdue en deners e ascun sont en opinion qil recovera terre pur terre.

E ajorna les parties jesqes a lendemaine. A quel jour

Spigurnel ne pas semblable enter bref de covenante et bref de garrantie de chartre qar en bref de covenante home ne pust auter chose recoverir fors tant solement damages mais cesti bref de garantie de chartre est done en lewe de voucher en queu il recovera terre pur terre a la vaillaunce par quei la corte agarde qe Geoffrei recover vers Thomas a la vaillance de la terre qil perde par defaute de sa garrantie et ses damages par nos discrecions &c.

[1]WROTHAM *v.* GOSEHALE.

[2]I.

De garauntie de chartre ou lespecialte voleit garauntie dil maner enter et la pleinte fut de ij. marchez de rente et fut le counte par taunt chalenge pur ceo qil etc. ne ly garauntyt le maner etc. et fut agarde bon pur ceo qil fut rent charge et ne mie parcel dil maner etc.

Garauntie de Chartre.

Alice[3] qe fut la femme Thomas de Wrotham[4] et Geffrei soun fiz porteront bref de garauntie [5]de chartre[5] vers Henri de Gosehale[6] et counta qe atort ne lour garauntist le maner de Gosehale qe [7]de vous tenom[7] et clamom tenir dount il ount la chartre Johan vostre[8] pere [9]qe heyr [10]vous estes[11] et pur ceo a tort qe la ou J. de Gosehale [12]pere cestui Henri qi heir il est[12] fut seisi de cel maner et hors de sa seisine lessa[13] mesme le maner[14] a Thomas de Wrotham et a Alice sa femme et a Geffrei lour fiz a terme de lour treis vies pur $\frac{xx}{iiij}$. [15]*li.* rendaunt[15] par an dount[16] xiiij.[17] aunz procheinz suaunz[18] apres le jour avauntdit si fut

[1] Reported by *α*, *β*, *δ*, *ϵ*, *ζ*, *η*, *θ*, *κ* and λ. [2] Text of (I) from *α* collated with *β*, *δ*, *ϵ*, *ζ*, *κ* and λ. λ gives two reports, collated here as λ_1 and λ_2. Names of the parties from E.R. The note in *β* is :—Garantie de chartre o le garantor fut oblige de garantir le manoir et de ceo mit avant fet qe testmoigne qil fut tenu a la garantie le manoir et il demande la garountie de ij. marcz de rente et ceo fut countreplede et fut chace a conustre le fait. [3] Cecile *ϵ*, *but* Alice *subsequently*. [4] Wortham *ζ* ; Wroham *κ*. [5–5] from *β*. [6] *from* *ζ*, λ_1 ; G. *β* ; Goshale λ_2. [7–7] eus tenunt *ζ*. [8] soun *ζ*, λ_2. [9–11] *ζ omits*. [10–11] il est λ_2. [12–12] etc. λ_2. [13] dona λ_1. [13–14] *ζ omits*. [15–15] m. de rent *ζ*. [16] *δ adds* des. [16–18] xxiiij. aunz primers *ζ*. [17] de iij λ_2.

this messuage by an assize of novel disseisin, by which assize he lost owing to the wrongful default of his warranty and sustained damage to the amount of five pounds. Thomas admitted the warranty, and did not deny that Geoffrey lost at the assize by his default.

Spigurnel J. There are some that hold that when a demandant recovers under a writ of warranty of charter he should recover from the defendant the actual value of the land he has lost. Others hold that he should recover land of equal value.

And he adjourned the parties to the morrow, upon which day :—

Spigurnel J. There is no similarity between a writ of covenant and a writ of warranty of charter. By a writ of covenant a demandant can recover naught but damages only, while this writ of warranty of charter is given in lieu of a voucher, by which he can recover land to the value of the land he has lost. Therefore this Court gives judgment that Geoffrey recover from Thomas land to the value of the land he has lost by Thomas's failure to warrant, and that his damages be assessed at our discretion etc.

WROTHAM *v.* GOSSHALL.

I.

Warranty of charter where the specialty purported to warrant the whole manor, and the breach of warranty alleged was in respect of a rent of two marks. Objection was taken to the count because it was alleged therein that the defendant did not warrant the manor, etc., but the count was held good because the rent in question was a rentcharge and not parcel of the manor.

Warranty of Charter.

Alice that was wife of Thomas of Wrotham and Geoffrey her son brought a writ of warranty of charter against Henry of Gosshall, and counted that he wrongfully refused to warrant them in the manor of Gosshall 'which we hold and claim to hold of you, for which we have the charter of John your father, whose heir you are.' And wrongfully for this reason, namely, that John of Gosshall, father of this Henry, whose heir this Henry is, was seised of this manor, and out of his seisin leased this same manor to Thomas of Wrotham and to Alice his wife and to Geoffrey their son for the term of their three lives at a yearly rental of four score pounds, the rent for the fourteen years immediately following

il paie avaunt la main et obliga lui e ses heirs a la garauntie &c. puis vint un Robert [1]de S.[1] et porta un assise de novel disseisine vers mesme ceux Alice et Geffrei de deus marchez de rente &c. [2]pendaunt quel assise il vindront a[3] Henri et prierent qil lour garauntisist. Il lour garauntir ne voleit par quei Robert de S. recoveri sa[4] rente.[5] Issi Henri dedit a garauntir [6]&c. et a tort [7]&c. [8]x.*li.*[9] &c.[10]

Stonore[11] defendi et[12] dit qil[13] porte cesti bref de garauntie de chartre[14] et demaundè la garauntie dil maner de G. e [15]par counte demaunde[15] la garauntie [16]de deus marche de rente par quei nentendoms mie qe tiel bref soit garauntie a tenir ceste plee.[16]

Spig. Si vous seez oblige[17] a garauntir tut le maner donqes estes vous oblige[17] a garauntir tut[18] la rente qest parcel [19]du maner[19] kar molin bois pree[20] et rente[21] tut est compris en el maner par qei [22]dites outre.[23]

Ston. uncore ne deviont il [24]estre respondue,[24] kar chescun garauntie est en le dreit e Geffrei qe porte cesti bref ensemblement [25]oue Alice[25] si est deinz age par quei nentendom mie qe avaunt soun age il devie estre respondu.[26]

Spig. ceste garauntie nest mie en le dreit kar il ne demaundont la garauntie forsqual terme de lour deus vies.

Wescote il nous bient lier a la garauntie par le fet nostre pere et[27] si nous vousissoms dedire le fet Geffrei qest [28]deinz age [29]duraunt soun nounage[29] ne peut mie estre partie [30]a ceo trier[30] par quei &c.

Spig. nous avoms entendu par le[31] counte qe Geffrei est purchasour de ceux tenemenz dount sil fut enplede nient countreesteant soun nounage il respondreit[32] et purreit joindre bataille e graunte assise e pur ceo dites outre.

Ston. [33]nous vous dioms[33] qe a cele demonstraunce ne deviont il estre respondu kar il dionț al comencement qe a tort ne lour garauntoms le maner de G. e puis en repliaunt[34] la cause de ceste garauntie dient qe un Robert de S. porta un assise de novel diseisine [35]et demaunda devers eux[35] deux marche de rente sourdauntz du maner [36]de G.[36] et

[1–1] Sturrei ζ, λ_1; Storeie λ_2. [2] surdant de meme le maner δ, ζ, λ_2. [3] ζ *adds* avant dit. [4] les ij. marcs de ζ. [5] ζ, λ_2 *add* surdant de meme le maner. [6–10] a tort et a lour damage de c.*li.* λ_2. [7–10] a tort et a lour damage de c. *li.* λ_2; et a ses damages de ce *li.* δ; e a lur damage de c. *li* ϵ. [8–10] xx *li* &c. κ. [9] xl. *li.* β. [11] *Stanh.* κ. [12–13] ϵ *omits.* [11–13] il ζ. [14] δ *adds* par bref. [15–15] en count countant de ζ. [16–16] du plai λ_2. [17] tenuz ζ. [18] δ, ζ *omit.* [19–19] ζ *omits.* [20] ϵ *omits.* [20–21] et similia ϵ; ζ *omits.* [22–23] *from* δ, λ_2, ζ; etc. α, β. [24–24] estre ressu [*sic*] λ_2. [25–25] *from* δ, ζ, λ_2; ove cest Alice λ_1; etc. α. β. [26] ressu λ_2. [27] ou δ. [28] tant qil est ζ, λ_2. [29–29] ζ, λ_2 *omit.* [30–30] ζ, λ_2 *omit.* [31] lour δ. [32] li couendreit respondre ζ, λ_2. [33–33] donqes dioms nous ζ. [34] reliant δ, ζ, λ; reliaunt κ. [35–35] uers eus de ζ. [36–36] ζ, λ_2 *omit*; de S. β; de T. κ.

the day aforesaid being paid in advance, and John bound himself and his heirs to warranty etc. Afterwards one Robert of S. came and brought an assize of novel disseisin against these same Alice and Geoffrey in respect of two marks of rent etc., who, while the assize was pending, went to Henry and asked him to warrant them. But Henry would not warrant them. By reason of which Robert of S. recovered his rent. Thus Henry refused to warrant etc. wrongfully and to their damage in the sum of ten pounds.

Stonore defended and said that while Alice and Geoffrey were bringing this writ of warranty of charter and were demanding the warranty of the manor of G., they were, in their counting, demanding warranty from liability to pay two marks by way of rent ; and we do not think that such a plea is tenable under such a writ.

Spigurnel J. If you be bound to warranty of the whole manor you are consequently bound to warranty of the whole of the rent, which is parcel of the manor, for mill, woods, meadows and rent are all comprised in the manor. Wherefore plead over.

Stonore. For another reason they ought not to be answered, for every warranty is in the right, and Geoffrey that together with Alice brings this writ is under age ; and therefore we do not understand why he should be answered before he attain his age.

Spigurnel J. This warranty is not in the right, for they are demanding warranty only for the term of their two lives.

Westcote. They are seeking to charge us with this warranty by this deed of our father ; and if we want to deny this deed, Geoffrey, who is under age, cannot, during his infancy, be a party to trying that issue. Wherefore etc.

Spigurnel J. We heard it stated in the counting that Geoffrey is the purchaser of these tenements. Consequently if he be impleaded he can answer, notwithstanding his infancy ; and he could join battle and have a grand assize. Wherefore plead over.

Stonore. We tell you that they ought not to be received on this count, for they began by saying that we wrongfully refused to warrant them in the manor of G. ; and then, in explaining their need of this warranty, they tell us how one Robert of S. brought an assize of novel disseisin and demanded of them two marks of rent issuing out of the

rescoveri &c et puis en sa conclusioun dit qe nous devoms garauntir deus marche de rente la ou il[1] demaunde[2] la garauntie du maner [3]par quei &c.[4]

[5]Spig. [6]vous estes tenuz a garauntir tout le maner et si cest rente qest parcel du maner.[7]

Ston. le bref voet qe nous lui garauntoms le maner et il se pleint de deus marche de rente qe sount recoveriz devers lui la qele rente a ceo qil diount si fut une charge du maner e ne mie rente[8] parcel du maner. Jugement si a ceti bref [9]deuient il estre respondu.[9]

Frisk. il peut aver bon bref qe nous lui garauntissoms deus marche de rente.

Cant.[10] nostre especialte [11]sour quei nostre actioun est fondu[11] ne voet nule rente [12]einz le maner de G. et a ceo covient qe nostre bref acorde.[12]

Toud.[13] Si la rente eust parcele du maner nous purrioms [14]par cas[14] aver bon bref de la rente [15]come du parcel du maner[15] mes la rente qe fut rescoveri devers nous si fut une rente charge de tut le maner par quei nostre bref de tout le maner nous deit servir en ceo caas.

Frisk. si Gilbert de Toudeby eust[16] oblige a garauntir [17]touz les[17] tenemenz &c par sa chartre et jeo fuise enplede et jeo le vouchasse e recoverasse a la value &c si homme porte autre foiz un assise [18]de novel deseisine[18] de les tenemenz recoverez a la value jeo porterai moun bref de garauntie de chartre vers lui[19] et ly lieray a la garauntie par mi sa[20] chartre et si[21] ne sount les tenemenz demaundez compris en la chartre kar il covient qe le bref soit porte des tenemenz demaundez auxi par de cea.

[1] λ_1 *adds* de primes. [2] δ, ζ *add* primes. [3–4] et demandoms jugement ζ [4] et la rente est paye par maynz des tenanz et issint par ceux du maner donqes estes vous tenuz a garrantir ceste rente qest parcelle du maner δ ; nous demandoms jugement λ_2. [5–7] δ *omits.* [6–7] ϵ, ζ, κ, λ_1 read, with slight variations : si vous estes tenuz a garauntir tote le manere et ceste rente qe est paie par meyns de tenantz del manere et issi parcele del manere dunt estes vous tenuz a la garauntir; ceste rente qest parcele de ceste manere dounc vous cestes tenu a garrantir cete rente qest parcele du maner λ_2. [8] ϵ *adds* service ne ; λ_2 *adds* cum. [9–9] *from* ζ *and* λ_2 ; etc. α, β. [10] *Malm.* ϵ. [11–11] δ, ζ, λ_2 *omit.* [12–12] δ, ϵ, ζ, κ, λ_1 *and* λ_2 *omit.* [13] δ, ϵ, λ_1 *add* ad idem. [14–14] β *omits* ; par aventure δ. [15–15] ϵ, ζ, κ, λ_1, λ_2 *omit.* [16] ust β ; me fut δ, ζ. [17–17] certeinz δ, ζ ; certein λ_2. [18–18] devers moi ζ ; δ, κ, λ_1, λ_2 *omit.* [19] δ, ζ *add* des tenemenz qe ieo recouery vers ly a la value ; λ_1 *adds* de temps qe jeo recovery. [20] ma δ, ζ, λ_1, λ_2. [21] δ *omits.*

manor of G. and recovered etc.; and then they end by telling us that we are bound to warrant two marks of rent where they began by demanding the warranting of the manor. Consequently etc.

Spigurnel J. You are bound to warranty of the whole of the manor and therefore of this rent which is parcel of the manor.

Stonore. The writ says that we warranted the manor to them, and now they make plaint as to two marks of rent which have been recovered against them. But this rent, according to what they say, was a rentcharge upon the manor and not a rent that was parcel of the manor. Judgment whether they ought to have answer to this writ.

Friskeney. He can have a good writ alleging that we warranted him two marks of rent.

Cambridge. Our deed, upon which we are bringing our action, says naught about rent, but speaks of the manor of G.; and therewith must our writ be concordant.

Toudeby. If the rent had been parcel of the manor we could then, in that case, have had a good writ for the rent as parcel of the manor, but the rent recovered against us was a rentcharge upon the whole manor. Wherefore our writ that is of the whole manor ought to serve us in these circumstances.

Friskeney. If Gilbert of Toudeby[1] had bound himself by his deed to warrant all the tenements etc. and if I, being impleaded, should vouch him and recover the value etc., then if at another time someone should bring an assize of novel disseisin in respect of the tenements which I have recovered to the value [of those I lost], I shall bring my writ of warranty of charter against Gilbert and shall bind him to warranty by virtue of his charter; and yet the tenements demanded [in the assize] are not comprised in the charter, for the writ must name the tenements in demand. So it is here.

[1] This discloses counsel's full name.

Spig. [1]il semble[2] qe si le bref de covenaunt[3] ne lui servereit pas [4]en cest caas qe[4] dount duresse serreit qil serreit saunz recoverir dil houre qe vous estes oblige a garauntir a lui maner &c auxi frauncment et auxi quitement come vous le lessates et ore est le maner charge de deus marche pluis qe ne fut &c par quei il covient qe vous lui garauntez kar taunt de profit lui est deschieu du maner.

Pass. Le bref voet qe nous lui garauntoms le maner et ceste rente nest paas parcel du maner par quei &c.

Hervi. Nous avom regard qil rende a vous $\frac{xx}{iiij}$ *li.* [5]par an pur le maner[5] qe peut estre la verrai value du maner et qe ceste charge est de vostre fet demene dount il semble qe vous lui devez garauntir [6]pur ceo qil nest forsqe vostre fee fermer.[6]

Frisk. Donqes porte soun bref [7]acordaunt a sa demaunde et nous lui garauntroms.[7]

Spig. Vous nestes paas a ceo oblige.

Frisk. Sil fut emplede de ij. acres du maner il averoit bon bref qe nous lui garauntissoms les deus acres et uncore nous ne sumes mie ensi obliges.

Spig. Nest paas semblable kar les deus acres sount parcel[8] du maner mes ceste rente est une charge de tut le maner.

Ston. Quant il resceut le maner il le resceut ove la charge quia res transit cum onere.

[1] From here to end δ, collated with ζ and λ_1, reads : Il semble qe bref de covenant ly serviroit en ceo cas. [a]Adhuc Spig.[b] Homme ne put my auer bref de covenant en ceo cas estre ceo il couent dire[c] qe vous lessastes le maner a memes ceux A. et G. [d]et qe vous ly[d] avez charge de ceux ij. marz dounc ascun gent voille dire qe vous estes a taunt tenuz [e]en plus avant[e] garrantir ceo qest vostre charge demene qe vous serriez si ceo fut rente service de la maner [f]etc. Herui. Vous ly[f] lessastes le maner a ferme rendant a vous iiij.[xx g] *li.* par an et[h] issint la verray value dounc sil ne fut garranti de les ij. marz qest vostre charge demene ceo serreit[i] en destres du maner en sa mayn et neqedant vous servy de vostre ferme enterment et ceo serreit duresce pur quei la court agarde qil[k] responde au fait. *Pass.*[l] Nous ne pomes dedire le fait mes nous demandoms jugement [m]del houre[m] qe par lour demonstrance il demandent la garrantie de ij. marz et le bref voet qe nous garrantoms le maner de qeu maner ceux ij. marz ne sunt my parcelle ne il ne sunt compris en lespecialte jugement si par tiel demonstrance a cel bref deiuent estre respondu.[n]

[a–c] Herui Nenyl bref de covenant ne li seruiereit point qe coment. [b] ζ *adds* Item. [d–d] vous les ζ, λ. [e–e] ou plus a ζ. [f–f] et ia du meinz si vous λ_2. [g] xxiiij λ_2. [g–h] mars ζ. [i] cherreit ζ. [k] qe vous ζ. [l] *Ston.* λ_2. [m–m] de pus ζ. [n] ζ *adds* &c.

[2] β *adds* en ce cas. [3] *For* de covenaunt β *reads* le tenant. From here to end ϵ reads : Serviroit myelz en cest cas qe bref de garauntie de chartre. Hervi. Avant ceo qe vous lessastes le maner a meymes ces Alice et G. vous lavyez charge de les ij. marcz dont auqune gent veolent dire qe vous estes autant tenuz ou plus de garrantir ceo qe est vostre charge demeyne cum vous serroiez si ceo fust rente service del maner. *Mutf.* Vous ly lessastes le maner a ferme rendant iiij.[xx] *li.* par an e ensynt la verroie value dont si il ne fust garauntie de les ij. marcz qe est vostre charge demeyne ceo

SPIGURNEL J. In the circumstances it seems hard that, if he cannot use the writ of covenant, he should be without recovery, for you are bound to him to warrant the manor etc. as unreservedly and fully as you granted it to him; and the manor is now charged with two marks more than it was etc.; and so you ought to warrant him in respect of this loss from the profits of the manor.

Passeley. The writ says that we warranted the manor to him, and this rent is not parcel of the manor; wherefore etc.

STAUNTON J. We see that he pays you four score pounds a year for the manor, which is probably the rack rental of the manor, and that this charge is a charge upon yourself and is naught else than your own fee farm, and it seems that you ought to warrant him against it.

Friskeney. Then let him bring a writ that is in accord with what he asks for, and we will warrant him.

SPIGURNEL J. You are not bound to do that.

Friskeney. The writ would be a good one if he were impleaded in respect of two acres of the manor, and we should be bound to warrant the two acres, but here we are not so bound.

SPIGURNEL J. The cases are not similar. The two acres would be parcel of the manor, but this rent is a charge upon the whole manor.

Stonore. When he took the manor he took the charge together with it; for the burden goes with the land.

---

cherroit en descres du maner en sa meyn. E neqedent vous servy de vostre ferme entierement e ceo serroit durescе pur ly etc. dont la court aggarda qe il respondre al fet qe voloit garauntir. *Pass.* Nous ne poms dedire le fet mes nous demandoms jugement del houre qe il par lur demustrance demandont la garauntie de deux marcz e le bref veot qe nous lur garauntissoms le maner de qel maner ces deux marcz ne sunt mye parcele ne il sunt compris en lespecialte. Juggement si par tele demustrance a tel bref deyvent estre respondu. *Ston.* Il nous semble qe nous ne deyvoms garauntir quare res transit cum onere etc. SPIG. Ce est verite quant ele est chargee de droit mes ne est pas ensynt en cest cas quare cels qy resceurent le maner ne poient nient saver de la charge etc. quare ele ne chiet mye en estente de maner eynz fust vostre fet demeyne e de qei il ne peot jammes aver bref de covenant par vertu du les quare les deux marcz ne passerent mye le les etc. Postea adjournatum in Banco. [4–4] *β omits.* [5–5] λ *omits.* [6–6] de mult plus forte qe il est vostre fee ferme κ, λ_1. [7–7] qe nous li garauntoms ij. marcz κ, λ_1. [8] κ, λ_1 *add* del soul.

Spig. [1]Ceo ne [2]me tout[3] pas la guarauntie devers vous qe si vous obligez vostre maner en vynt livers e puis moi lessez mesmes le maner &c rendaunt a vous la value du maner par an si vous seez oblige a garauntir a moy le maner et il dereyne la charge devers moi jeo serrai descharge devers vous en taunt com vers un autre par vostre fet sui[4] charge.

Ston. Ceo ij. marcz ne lie mie parcel du maner Jeo vous profiez car checun parcel du maner passe par my la chartre le ij. marcz ne passerent par my la chartre par qey &c.

Spig. quod sic. Car il est oblige a garauntir checun parcel du maner e les ij. marche de rente contrevalent un parcel de maner issint qe si il perde la rente il perde parcel du maner par qey &c.[5]

Hervi. Bref de covenaunt ne lui servereit point kar lespeciaute ne [6]voet nul covenaunt[7] ne bref daquitance pur ceo qe nest mie rente service en le dreit einz est une charge par quei il covient [8]qe vous seez[8] a un du fet et [9]pur ceo conusez le fet e dites[10] sour quei vous volez demorrer.[11]

Pass. Nous grauntom le fet mes nous dioms qe soun bref voet qe nous lui garauntoms le maner e lespeciaute [12]qil mettont avant ensement et ount counte de deus marche de rente qe nest en lespecialte nen le bref contenu[13] ne nest parcel du maner dount il demaundount la garauntie. Jugement etc.[14]

Nota par Spig qe enfant deins age qest purchasour put joindre bataile e grant assise.

Note from the Eyre Roll.

The Count was :—Alicia et Galfridus dicunt quod cum predictus Johannes pater predicti Henrici cujus heres ipse est per scriptum suum concessit dimisit et confirmavit predicto Thome de Wrotham quondam viro ipsius Alicie et eisdem Alicie et Galfrido manerium predictum cum pertinenciis etc.

[1–5] Verum est mes iusta causa qe si vous eiez oblige certeinz tenemenz a un en xx.*s.* et vous le baillez a moy rendant a moi la verrai value ou meins et obliget etc. ut supra cesti a qi les tenements sont obligez issint et charget sil ne fut garaunti serreit grant durescе λ_1. κ is similar. [2–3] ne maintient β. [4] su β. [6–7] le servereit pas κ; le servereit pas en cest cas λ_1. [8–8] *from* β; α *omits.* [9–10] puis ditez κ, λ_1. [11] κ, λ_1, *add* en jugement. From here to end κ reads : *Fris.* Nous demaundoms jugement de la variaunce entre le bref et le conte com avaunt. Hervy. Vous graunterez le fait ou dedirrez ceo vous agarde. *Pass.* Nous le grauntoms mes nous demaundoms jugement de la variaunce entre le renable demonstrance et lespecialte qar par la renable demonstrance il demandent la garauntie de ij. mars de rente charge et lespecialte vult qe nous lui garrauntoms le maner ove les apurtenances et la rente nient par quei demuroms en vos jugements. Hervy. Agarde vos jugemens. [12–14] accordant jugement sil devent la garauntie recoverir par ceo bref et habuit diem de judicio audiendo apud Roucestre λ_1. [13] β *omits.*

SPIGURNEL J. That does not deprive me of my right to be warranted by you; for if you charge your manor with the payment of twenty pounds, and then lease to me the manor etc. at a yearly rack rent, then, if you are bound to warrant the manor to me, and he that has the charge derains it against me, I shall, by your deed executed subsequently to the charge, be held harmless as well against you as against anyone else.

Stonore. Those two marks are not charged upon any particular parcel of the manor. This appears from the fact that every parcel of the manor passes by the charter, but the two marks do not pass by the charter. Wherefore etc.

SPIGURNEL J. That is so. For he is bound to warrant every parcel of the manor. Now the two marks of rentcharge are equivalent to the rent of a parcel of the manor, so that if Geoffrey lose that rent he loses a parcel of the manor. Consequently etc.

STAUNTON J. A writ of covenant would not be to his purpose, for a specialty does not suppose a covenant; nor yet a writ of acquittance, as this is not rent-service in the right, but a charge. And so you must come to an agreement as to the deed; and, to that end, first admit the deed, and then demur as to what you will.

Passeley. We admit the deed, but we say that his writ supposes that we warranted the manor, as does the specialty which they have put forward, while they have counted of two marks of rent of which neither the specialty nor the writ says aught; neither are they parcel of the manor warranty of which they are demanding. Judgment etc.

You shall take note that it was laid down by SPIGURNEL J. that an infant within age that is a purchaser may join battle and have grand assize.[1]

Note from the Eyre Roll—*continued.*

tenendum ipsis Thome Alicie et Galfrido ad totam vitam eorundem Thome Alicie et Galfridi Reddendo annuatim eidem Johanni et heredibus suis quater viginti librarum etc. et idem Johannes obligasset se et heredes suos ad warrantizandum eisdem Thome Alicie et Galfrido ad totam vitam eorumdem

[1] See p. 208 *supra.*

Note from the Eyre Roll—*continued.*

predictum manerium cum pertinenciis versus quoscunque etc. quiquidem Thomas obiit et postmodum quidam Robertus de Stureye arramiavit quandam assisam nove disseisine versus ipsos Aliciam et Galfridum de redditu duarum marcarum provenientium de eodem manerio coram Justiciariis Itinerantibus hic etc. coram quibus iidem Alicia et Galfridus predictum redditum per assisam predictam amiserunt etiam licet iidem Alicia et Galfridus pendente hic assisa predicta sepius requisivissent predictum Henricum ad warrantizandum eis predictum Redditum in forma predicta idem Henricus eis warrantizare etc. hucusque injuste contradixit etc. unde dicunt quod deteriorati fuerunt et dampnum habent ad vallenciam viginti librarum et inde producunt sectam etc.

Et proferunt predictum scriptum sub nomine predicti Johannis de Gosehale in quo continetur quod idem Johannes concessit dimisit et confirmavit predictis Thome Alicie et Galfrido manerium predictum cum terris domibus arboribus muris fossatis fossis gardinis mariscis pratis vivariis chaciis pasturis viis semitis redditibus sectis tenencium releviis perquisitiis Curie et omnibus aliis pertinenciis ad dictum manerium spectantibus tenendum eisdem Thome Alicie et Galfrido a festo Sancti Michaelis anno regni Domini Regis nunc secundo a [*sic*] totam vitam ipsorum Thome Alicie et Galfridi reddendo inde annuatim eidem Johanni etc. etc. . . . de quoquidem redditu predicti Thomas Alicia et Galfridus predicto Johanni pro quatuordecim annis proximo sequentibus . . . plenarie solverunt promanibus. Et idem Johannes obligavit se et heredes suos ad warrantizandum predictum manerium etc.

Henry takes exception to variance between writ and count. He says :— quod non debet ad istud breve ad talem narracionem respondere. Dicit enim quod cum in predicto brevi contineatur quod idem Henricus warrantizet predictis Alicie et Galfrido predictum manerium cum pertinenciis et in narracione etc. dicunt quod predictus Henricus injuste dedicit warrantizare

[1]II.

Garrantie de chartre.

Margerie qe fut la feme Johan de Goshale porta bref de garantie de chartre vers William de Horton et dit qe a tort ne ly garante le maner de Hortone et pur ceo a tort qe la ou le dit William lessa le dit maner a dite Margerie a terme de sa vie fesant a ly xxiiij. *li.* par an et obliga ly et ces heirs a la garantie la vint un Robert de Sturrye et porta une assise de nouel disseisine deaunt Sire Heruy de Stauntone en meme cet Eyre et fit sa pleinte de [ij.] Marches de rente issant de mesme le maner pendant qel assise ele vint a lauantdit William et ly pria qil garantasse il la garantir ne voleit mes la suffrit perdre par sa defaute a tort etc. et mist auant chartre qe testmoigne le lees ou clause de garantie.

[1] Text of (II) from η.

Note from the Eyre Roll—*continued.*

eis predictum redditum duarum marcarum quiquidem redditus non est parcella nec de pertinentiis ejusdem manerii petit judicium de variacione brevis et narracionis.

Et Alicia et Galfridus dicunt quod predictus Johannes pater etc. ante dimissionem factam eisdem Alicie Galfrido et predicto Thome de predicto manerio cum pertinenciis tenendo ut predictum est oneravit manerium illud de predicto redditu duarum marcarum et dicunt quod postmodum concessit et dimisit idem manerium integraliter cum omnibus ad manerium illud spectantibus prout in predicto scripto continetur reddendo verum valorem ejusdem manerii scilicet predicta quater viginti librarum per annum et obligavit se et heredes suos ad warrantizandum etc. unde petunt judicium si de onere prius imposito per factum ipsius Johannis in hac parte quod tendit in diminutionem valoris integralis ejusdem manerii per eundem Henricum filium et heredem predicti Johannis warrantizare non debeat maxime cum nullum remedium per aliquod aliud breve sibi competat in hoc casu etc.

Et Henricus dicit quod cum predicti Alicia et Galfridus nituntur ligare ipsum ad warrantizandum eis predictum redditum duarum marcarum nec aliquam specialitatem ostendunt per quod eis redditum illud warrantizare debeat nisi tamen quod pretendunt predictum scriptum dimissionis etc. in quo nulla facta est mencio de predicto redditu duarum marcarum etc. et de predicto manerio cum pertinenciis unde predictus redditus non est parcella nec de pertinenciis ejusdem etc. petit judicium si predicti Alicia et Galfridus sine scripto speciali ipsum Henricum ad warrantiam illam ligare possunt aut debeant etc.

The hearing was ultimately adjourned to Westminster 'in crastino Ascensionis.'[1]

II.

Warranty of charter.

Margery that was the wife of John of Gosshall brought a writ of warranty of charter against William of Horton, and said that he wrongfully refused to warrant her in the manor of Horton; and wrongfully for this reason, to wit, that whereas the said William leased the said manor to the said Margery for the term of her life at a yearly rental of twenty-four pounds, and bound himself and his heirs to warranty, there came one Robert of Sturry and brought an assize of novel disseisin in this same Eyre before Sir Hervey Staunton, and claimed a rent of two marks charged upon the same manor; and while this assize was pending she, Margery, went to the aforenamed William and asked him to warrant her, but he refused to warrant her, and suffered her to lose by his wrongful default etc.; and she put forward a charter which proved the lease and contained a clause of warranty.

[1] *m.* 25*d.* No record of the hearing at Westminster has been found.

Passeleu. Par vostre bref supposez vous drener une garantie de Maner de Hortone pur ceo qe vous fustes enplede de .ij. marches de rente par assise de nouel disseisine et perdistes de laqele vous ne portez bref enz de Manere qe adonqe ne fut pas en demande jugement si tel bref etc.

Malm. Vous nous lessastes le maner ausicom descharge forpris les services dues a chef seignour et de cel estat nous obligastes de garantir et depuis qe cette rente fut droue vers nous par vostre fet demene qe vous feites a nous auant le lees a nous fet jugement si de la dite charge ne nous deuet garantir.

Pass. Le maner passa ou la charge jugement etc.

Spigurnel. Res transit cum honere en cas ou la charge est de droit, saver de services dues a chef seignour et depuis qe cette charge est de vostre imposicion demene qe nest pas charge de droit et nest pas de droit enz de fet il semble qe vous ly deuet garantir qar altrement ensuereit qe vous ly poret charger a volunte et le tenant estre sanz recouerir.

Fris. Si vous seiet enplede de .x. acres de terre par assise de nouel disseisine et portez bref de garantie de pre vous ne prendreit rien.

Fris.[sic] Il poit auer bref de garantie etc. de rente accordant a son cas et puis auer mis auant la chartre com il fet ore.

Spigurnel. Le bref de garantie etc. dit qe Quod warantiset tantum de rente etc. quam tenet ideo etc. Mes Margerie nest pas tenant de la rente qe cet une charge de couste et noun pas parcele de Maner pur quei le bref qe vous deuet[1] ne la seruereit pas.

Pass. Portez donqes bref de aquitance ou bref de acquitance [*sic*] ou bref de couenant qil vous acquite.

Malm. lun bref et lautre sount en service et la rente est une charge pur quei etc.

Stauntone. Il mettent auant fet qe proue qe vous ly deuet garantir le Maner etc. et ceo qe vous pledet si est desturtre de la garantie et voider pur quei primes coniset si ceo seit vostre fet ou la dedites nous vous dioms par agard.

Stonore. Nous ne poums dedire le fet mes par ceo fet ne poez auantage auer par vostre bref demandet vous la garantie de Maner et par vostre demostrance vous dites estre enplede de ij. marches de

[1] *Sic.*

Passeley. By your writ you are claiming to prove a warranty in respect of the manor of Horton, and you support this by counting that you were sued for a rentcharge of two marks before an assize of novel disseisin and lost. But it is not for this that you are bringing this writ, but in respect of the manor of Horton, which was not in demand before the assize. Judgment whether such a writ etc.

Malmerthorpe. You leased the manor to us free from all services except those due to the chief lord, and bound yourself to warrant us of such an estate. Now, since we became liable for this rent-charge through a deed of yours, executed by you previously to the lease you granted to us, judgment whether you ought not to warrant us of this charge.

Passeley. The manor and the charge passed together. Judgment etc.

Spigurnel J. The burden passes with the land in cases where the charge is upon the right, that is upon services due to the chief lord; but since this charge is of your own imposition, and is not a charge upon the right nor touching the right, but one created by deed, it seems that you ought to warrant her; for otherwise it would be open to you to create what charges you pleased, and the tenant would be without remedy.

Friskeney. If you were impleaded by assize of novel disseisin in respect of ten acres of land, and you bring a writ of warranty in respect of meadow, you would take naught.

Friskeney [sic]. She can have a writ of warranty etc. of rent fitted to her case, and support it by her charter as at present.

Spigurnel J. The writ of warranty etc. says that the defendant is to warrant so much rent etc. which the tenant so holds. But Margery is not tenant of the rent-charge, for this is a collateral charge and not a parcel of the manor. Consequently the writ you mention would not serve her purpose.

Passeley. Bring then a writ of acquittance, or a writ of covenant to acquit you.

Malmerthorpe. Both the one writ and the other are for rent-service. This is a rent-charge, wherefore etc.

Staunton J. They have produced a deed proving that you are bound to warranty of the manor etc., whereas your plea goes to setting aside and avoiding that warranty; so first admit this to be your deed, or deny it, and then we will give judgment.

Stonore. We cannot deny the deed, but you can get no advantage from it: for, by your writ, you claim warranty of the manor, but in your count you said you were impleaded in respect of two marks of

rente et ne dites pas qe ceus sont parcele de meme le Maner et vostre estat ne veit pas garantie de rente jugement etc.

Malm. Et nous jugement depuis qe vous auz conu le fet qe veit qe vous nous lessastes etc. a terme nostre vie a tenir franchement et quitement par les services auanditz descharge vers tote genz forpris les services dues a chef seignour et vous ne dedites pas qe ceste charge nest de vostre fet demene et altre remedie a nous ne donetz jugement si garantie etc.

ENPRISONEMENT.

[1]NOTA.

Nota qe si un homme prent un autre par sa garauntie et lenprisoune porte soun bref demprisonement et descent en pays qe de rien coupable homme nenquerra forsqe soulement de lenprisonement [2]et ne mie de la cause de lenprisonment pur ceo qe enprisonement[2] par garrauntie chiet en awouerie etc.[3]

[4]NOTA.

Nota qe un homme fut agarde a la prisoun par Spigurnel pur ceo qil fut trove disseisor encountre soun fet demene ut in eodem itinere.

MESNE.

[5]ANON. *v.* ANON.

Bref de meen porte devers iij. lun avoit aliene sa terre le vicount returne nichil habuit ou dit fut qe la proclamacioun mie fete en ceo cas pur ceo qil sount touz nomez en un bref.

De medio. Deus parceners[6] porterent un bref de meen[7] vers iij. un des iij. avoit aliene sa terre & ne vynt point & le viscount respondi[8] qil navoit rien ou estre [9]somonable ou atachable ou destreinable.[9]

Caunt. vostre[10] accioun ne vaut rien vers les ij.[11] [12]de peus[12] qe le terce[13] fet[14] defaute &[15] nad rien [16]ou estre destreinable[17] &c qar la proclamacioun

[1] Note from *a*, *aa*, *β*. Text from *a* collated with *β*. [2–2] *β omits*. [3] *β omits* etc. [4] Note from *a*. [5] Reported by *a*, *aa*, *β*, *γ*, *δ*, *ϵ*, λ. Text from *γ* collated with the others. Head-note from *a*. [6] *from β, δ*. [7] mene *a*; men *β*. [8] retourna *a*; retorna *β*. [9–9] destreint somouns ne attache *a*; somons atache ou destreint *β*. [10] une *a*. [11] deus *a*. [12–12] dil houre *a*; de hure *β*. [13] tierce *a*. [13–15] λ *omits*. [14] face *a*, *β*. [16–17] *a omits*. [17] distreint *β*.

rent, and you did not say that those two marks were parcel of the same manor; and the estate you hold does not suppose warranty of rent. Judgment etc.

Malmerthorpe. And we ask for judgment. Seeing that you have acknowledged the deed which proves that you leased etc. to us for the term of our life to hold freely and wholly by the services aforesaid, and warranted us against all persons except in regard to the services due to the chief lord, and seeing that you do not deny that this charge is by your own deed, and that you give us no other remedy, we ask for judgment whether warranty etc.

IMPRISONMENT.

NOTE.

Note that if one by his warrant arrest another and if he that is imprisoned bring his writ of imprisonment, and the other go to the country on the issue that he is guilty of naught, the fact of imprisonment shall alone be inquired of, and not the cause of imprisonment, for imprisonment by warrant is a matter of avowry.

NOTE.

Note that a man was committed to prison by SPIGURNEL J. because he was found to be a disseisor against his own deed: as appears in this same Eyre.

MESNE.

ANON. *v.* ANON.

Writ of mesne brought against three. One of these had alienated his interest, and the Sheriff returns *nulla bona*. It was said that the proclamation had not been made in his case because all three were named in the one writ.

Two parceners brought a writ of mesne against three. One of the three had alienated his interest, and did not appear. The Sheriff returned that he had naught whereby he was summonable or attachable or distrainable. Mesne.

Cambridge. Your action is not maintainable against the two since the third has made default and has naught whereby he is distrainable

ne gist poynt[1] en ceo[2] cas ne les ij.[3] ne serrount[4] james chasez dentrer en laqitance saunz le terce del oure qil sount [5]un heir.[5]

Pas. ad idem si la proclamacioun deust[6] estre fete & qe les ij. qi portent[7] cest bref[8] deverount[9] atorner al[10] seignur paramount[11] il ensiwereit[12] qe eux averent[13] ij. seignurs[14] dun tenement &c.

Stonore ad idem [15]le statut[15] est a entendre qe le tenant[16] atornera al[17] seignur paramount[18] apres la proclamacion la ou il le peut fere saunz prejudice dautres[19] sed sic hic[20] non &c ergo proclamacio non jacet.[21]

Pass. ad idem si un obligacioun [22]de dette[22] soit fait a iij.[23] & eux soient[24] a lour accioun & lun ne siwe[25] poynt [26]accioun est esteint qar ele ne peut estre severe [27]& mesme la resoun est ici &c.[28]

[29]NOTA.

Nota qe la ou acquitaunce est dereyne par bref de meen et les avers le tenaunt en demene soient emparkez serra comaunde a vicount a prendre destresce de meen a la value la destresce le tenant en demene et serra livere au seignur paramount [30]e [31]la destresce le tenaunt en demene deliverer[32] et ceo a tut le foiz qil serra destreint par la defaute le meen apres laquitaunce derreine et si la quitaunce soit derene en baunk istra[33] bref al vicount ut supra [34]ut in itinere Kancie[35] per SPIGURNEL.

[36]NOTA.

Meen. Nota qe en bref de Mene qe la ou laquitance est derene en Eyre par jugement qe qele houre qe le tenaunt seit par la defaute son Mene destreint pour memes lez services durant le Eyre il avera bref hors de Roules al vicounte qil mette les bestes le Mene en lu ou les bestes le tenant furent e sil seit distreint apres le Eyre fini face venir le Record hors de quel Record il auera tel bref Inquirendi etsi idem processus in comuni banco obseruetur.

[1] paas *α*; pas *β*. [2] cest *α*. [3] deus *α*. [4] serront *α*, *β*. [5–5] en un bref nomee *α*. [6] duist *α*; dut *β*. [7] *α omits*; porterent *β*. [8] *α adds* usent; *δ adds* de meen. [9] de [*sic*] *δ*. [10] *α*, *δ add* chief. [11] *α omits*. [11–18] λ *omits*. [12] ensueroit *α*. [12–13] qil averont *α*. [14] seignourages *β*. [15–15] lentre ceo *α*. [16] *α adds* se. [17] *α*, *δ add* chief. [19] *α adds* qe de lui mesmes. [20] *from* ϵ; *γ has* sic. [20–21] mes ceo ne put il my en ceo cas pur quei la proclamacion ne gist etc. *α*, *β*; *δ* reads the same, adding: qar lautre qi suist ne poet pas estre severe meme la reson par de cea; sed hic non potest ergo proclamacio non jacet λ. [22–22] *β omits*. [23] treys *α*; deus *β*. [24] eyent *α*. [25] suyt *α*; swit *β*. [26–28] lactioun est esteint kar il ne peut estre severe *α*; laccion est esteint car ele ne put mie estre seuere ne ceuz qe suent ne deiuent estre ressu auxi de cete part etc. λ. [27–25] ausi cy &c. ϵ. [29] Note from *α*, *aa*, *β*, λ. Text from *α* collated with *β* and λ. [30–32] λ *omits*. [31] *from β*; *α has* a. [32] deliveres *β*. [33] issera *β*, λ. [34–35] λ *omits*. [36] Note from *η*.

etc.; for the proclamation[1] does not apply in these circumstances, nor can the two be forced to join in an acquittance without the third, as [all three] constitute but a single heir.

Passeley, ad idem. If it were necessary for the proclamation to be made and for the two who bring this writ to attorn themselves to the lord paramount it would follow that they would have two lords of a single tenement etc.

Stonore, ad idem. The Statute must be construed as ordering the tenant to attorn himself to the lord paramount after the proclamation where he can do so without prejudice to the others; but such is not the case here etc., and consequently the proclamation does not lie.

Passeley, ad idem. If a bond for debt be made to three, and they take action on it, and the third does not sue, the action is null, for the right of action is not partible; and the same reasoning applies here etc.[2]

NOTE.

Note that where an acquittance is proved by writ of mesne and the cattle of the tenant in demesne have been seized, the Sheriff shall be directed to levy distress upon the mesne tenant to the value of the distress levied upon the tenant in demesne, and to make livery of it to the lord paramount; and to deliver the distress levied upon the tenant in demesne. And this shall be done every time that the tenant in demesne shall have been distrained, after proof of the acquittance, through the default of the mesne tenant. And if the acquittance be proved in Bank, a writ shall issue to the Sheriff *ut supra*: as ruled in the Eyre of Kent by Spigurnel J.

NOTE.

Note that in a writ of mesne where the acquittance is established by judgment in Eyre if the tenant [in demesne] through the default of his mesne shall have been distrained during the Eyre in respect of the same services, he shall have a writ from the Roll directing the Sheriff to seize the cattle of the mesne in lieu of those of the tenant [in demesne]. And if the tenant [in demesne] be distrained after the termination of the Eyre he shall have the Record brought, and on the evidence of the Record he shall have a similar writ *inquirendi*; although the same procedure may be observed in the Common Bench. Mesne

[1] *Sc.* Proclamation by the Sheriff in two full counties that the mesne do come at a day contained in the writ to answer his tenant. For the procedure in mesne see Statute of Westminster II, cap. ix.

[2] The modern conveyancer draws covenants with A., B. and C. and with every two and one of them, their and every of their etc.

[1]LABBE DE SEYNT RADEGUNDE *v.* BYKENORE.

De meen. Labbe de seynt Radegunde [2]jouste Dover[2] porta breve de meen vers Johan le fitz Johan de Biggenor[3] et clama a tener de luy certeyn tenementz en B. par feaulte et par escuage etc. saunz fere mencion del homage.

Kyng. conusa laquitance mes il dit qe nyent destreint par sa defaute.

Toudebi vous auetz dit qe vous tenetz de Johan par escuage pur qei nauetz fet mencion de homage vostre counte est mauueys et purra estre preiudiciel a Johan et pur ceo Johan veyetz ci si vous grantez[4] laquitance [5]sanz le homage.[5] Et labbe conust qe qil [*sic*] tient les auantditz tenementz de Johan etc. par homage et Johan ly granta laquitance pur mesmes les suruices.

Note from the Eyre Roll.

Johannes filius Johannis de Bykenore summonitus fuit ad respondendum Abbati Sancte Radegundis juxta Douorre de placito quod acquietet ipsum de servicio quod Johannes de Sancto Johanne ab eo exigit de libero tenemento suo quod de predicto Johanni filio Johannis tenet in Estlangetone Gussetone et Beausfeld unde idem Johannes filius Johannis qui medius est inter eos eum acquietare debet etc.

The Abbot's count was :—quod cum ipse teneat de predicto Johanni de Bykenore centum et quinquaginta acras terre cum pertinenciis in eisdem villis per homagium[6] fidelitatem et servicium unius denarii per annum et ad scutagium domini Regis quadraginta solidorum cum acciderit decem solidos et ad plus plus et ad minus minus et fac[ere] pro ipso Johanne filio Johannis Wardam ad Castrum Douorrie pro integro feodo militis cum acciderit et Abbati Sancti Augustini Cantuarie quatuor solidos per annum et acquietandum ipsum de secta hundredi de Beauwesburgh et de auxilio vicecomitis pro omni servicio etc. pro quibus serviciis predictus Johannes filius Johannis ipsum Abbatem versus quoscunque debet acquietare etc. predictus Johannes de Sancto Johanne ipsum distringit in predictis tenementis exigendo ab ipso pro scutagio domini Edwardi Regis patris domini Regis nunc de annis

[1] Reported by δ and ζ. Names of parties from E.R. Text from δ collated with ζ. [2–2] from ζ. [3] from ζ; B. δ. [4] voillez granter ζ. [5–5] from ζ. [6] The count is entered on the Roll as amended.

THE ABBOT OF ST. RADEGUNDE'S *v.* BICKNOR.

The Abbot of St. Radegunde's near Dover brought a writ of mesne against John the son of John of Bicknor, and claimed to hold certain tenements of him in B. by fealty and scutage etc. without saying anything of homage. Mesne.

Kinghemsmede admitted the acquittance, but denied any distress by reason of the mesne's default.

Toudeby. You have said that you hold of John by scutage. Why have you said naught of homage? Your counting is bad and will be prejudicial to John; and look you here, John, and say whether you grant this acquittance without homage.

And the Abbot admitted that he held the aforesaid tenements of John etc. by homage; and John granted him the acquittance in consideration of the same services.

Note from the Eyre Roll—*continued.*

ejusdem Regis patris etc. vicesimo octavo et tricesimo primo quadraginta solidos etc. pro defaltu acquietancie predicti Johannis de Bykenore etc. unde dicit quod deterioratus est et dampnum habet ad valentiam decem librarum etc. Et inde producit sectam etc.

John Fitzjohn's plea upon which issue was joined was:—quod bene cognoscit quod debet predictum Abbatem acquietare versus predictum Johannem de Sancto Johanne etc. set bene defendit quod idem Abbas non distringitur per defaltum acquietancie ipsius Johannis filii Johannis etc. Et de hoc ponit se super patriam.

The verdict of the Jury was:—quod predictus Abbas distringitur per defaltum acquietancie predicti Johannis filii Johannis sicut queritur ad dampnum ipsius Abbatis viginti solidorum.

The judgment was:—quod predictus Abbas recuperet predicta dampna sua etc. Et quod predictus Johannes filius Johannis de cetero acquietet ipsum Abbatem versus predictum Johannem de Sancto Johanne. Et Johannes filius Johannis in misericordia etc.

Et preceptum est vicecomiti quod distringat ipsum Johannem filium Johannis ad acquietandum ipsum Abbatem etc. Postea predictus Abbas remittit ei dampna etc.[1]

[1] *m.* 5*d.*

TABLE OF THE STATUTES IN VOLUME I.

PAGE

Statute of Winchester, 13 Edward I, cap. ii (arrest of indicted persons) 70

Statute of Westminster I (3 Edward I) cap. i (fines imposed in Eyre) 140

" " " " cap. xx (trespassing in ponds and parks) . . 84, 188

Statute of Westminster II (13 Edward I) cap. x (limitation of time for delivery of writs in Eyre) 161, 175

" " " " cap. xxxiv (punishment for rape) 134

Ordinances, 5 Edward II, cap. xxxii (delay of justice by letter from the King) . . . 176

TABLE OF THE STATUTES IN THE PRESENT VOLUME.

PAGE

De Bigamis, 4 Edward I, cap. iii (aid from the King in dower) . 75

De presentibus vocatis in warantum, 20 Edward I (voucher to warranty) 72

Statute of Gloucester, 6 Edward I, cap. i (damages in Ael) . . 2

" " " " cap. iii (alienation by tenant by the law of England) . 94, 95

Magna Carta 36, 86, 87

Statute Merchant, 11 Edward I 28, 49, 63, 65, 69

Statute of Westminster I (3 Edward I), cap. xlvii (voucher to warranty) 179

Statute of Westminster II (13 Edward I), cap. i (fines void against heir) 201

" " " " cap. iii (default of husband) 150 *et sqq*, 163, 203

" " " " cap. ix (mesne) . . . 215

" " " " cap. xl (age) 41, 142, 143, 144, 145, 149

Statute of Westminster III (Quia Emptores) 18 Edward I . . 91

TABLE OF THE FORMS OF ACTION AND OF APPEALS IN VOLUME I.

(Two page-references included within brackets refer to independent reports of the same case.)

Appeal of murder, 121

——— robbery, 113

Attaint, 157, (159, 170)

Trespass, 186,187,188 (two cases), 189

TABLE OF THE FORMS OF ACTION IN THE PRESENT VOLUME.

(Two or more page-references included within brackets refer to independent reports of the same case.)

Account, 1

Ael, 2

Charters, Detinue of. *See* Detinue of Charters

———, Warranty of. *See* Warranty of Charters

Cosinage, (4, 5), (6, 7), 8

Covenant, 9, 12

Darrein Presentment, 15

Debt, (19, 21), (23, 24, 26), 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 48, 50, 51, 52, 54, 57, 58

Deceit, (60, 61)

Detinue of Charters, (16, 18)

Dower, (62, 65, 69), (71, 72, 74), (75, 76), 78, 79, 80

Droit, 81, 82, 85, (86, 87), 87

Ejectment from Wardship, (88, 90, 91)

Entry (*ad terminum qui preteriit*), 92, 93, (117, 118), (119, 120), 121, (122, 124, 125)

Entry (*cui illud dimisit*), (94, 95), 103

——— (*causa matrimonii prolocuti*), (126, 127, 129)

——— (*cui in vita*), (113, 114), (136, 137, 138), 140, (142, 143), 144, 145, 146, (147, 148), (153, 156, 158, 159), 161, 163, (164, 166), 167, 168, 169

——— (*cui in vita ante divorcium*) (130, 131, 133, 134, 135)

——— (*dum fuit infra ætatem*), 101, 170

——— (undefined), (105, 108, 110), 111, 112, (149, 152)

Formedon (in the *descender*), 200, 201

——— (in the *reverter*), (186, 191, 197)

Latest Presentation. *See* Darrein Presentment

Mesne, 214, 216

Right. *See* Droit.

Warranty, 202, 204

——— of Charters, (205, 206), 207, 212

NAMES OF THE PARTIES TO THE ACTIONS AND APPEALS (OTHER THAN ANONYMOUS ONES) REPORTED IN VOLUME I.

	PAGE
Asshenden and others, Taylor *v.*	113
———————, ———	121
Barker, Gervays *v.*	99
Bishopgate, Gilmyn *v.*	189
Gervays *v.* Barker	99
Gilmyn *v.* Bishopgate	189
Grandison, Scoland *v.*	158
Moiant *v.* Anon.	188
Scoland *v.* Grandison	158
Somerset *v.* Anon.	186
Taylor *v.* Asshenden and others	113
——— *v.* ———————	121

NAMES OF THE PARTIES TO THE ACTIONS (OTHER THAN ANONYMOUS ONES) REPORTED IN THIS VOLUME.

	PAGE
Achard *v.* Bertelot	103
Adesham, Seneschal *v.*	85
Angelyn *v.* Geddinge	94
Aspaile *v.* Aspaile	147
Attchapel *v.* Simon	140
Attewell *v.* Cobham	97
Bainton *v.* Higham	161
Bakewell, Baldwin *v.*	175
————, Detling *v.*	173
Baldwin *v.* Bakewell	175
Bandon *v.* Anon.	48
Barton, Gervyn *v.*	28
Bath, Wyberd and Gilbert *v.*	82
Beracre, Scott *v.*	23
Bereham (Executors of) *v.* Twytham	29
Berham, Sale *v.*	185
Bertelot, Achard *v.*	103
Bicknor, Abbot of St. Radegunde's *v.*	216
Bold *v.* Jordan	130
Bray, Farringdon *v.*	52
Brockwell, Lefevre *v.*	179
————, Wellington *v.*	78
Brockwell, Wellington *v.*	149
————, ———————	153
Brown *v.* Anon.	43
Buckland, Bug *v.*	167
———— *v.* Leanore	9
Bug *v.* Buckland	167
Butterley *v.* Anon.	50
Canterbury, Chiche *v.*	87
Chalon *v.* Hammil	4
Chiche *v.* Canterbury	87
——— *v.* Leicester	181
——— *v.* ————	184
Cobham, Attewell *v.*	97
———— *v.* Cray	81
———, Gosshall *v.*	62
Coxton, Anon. *v.*	205
Cray, Cobham *v.*	81
—— *v.* Statenborough	121
——, Statenborough *v.*	86
Detling *v.* Bakewell	173
Ellis, Hatchard *v.*	122
Esling *v.* Essington	136

	PAGE
Essington, Esling *v.*	136
Esthalle and Herlison *v.* Herlison	19
Farnborough, Russell *v.*	146
Farringdon *v.* Bray	52
Fitzjohn *v.* Anon.	51
Fulham, Wyard *v.*	164
Gatton *v.* Gatton	80
Gatton *v.* Norwood	75
Geddinge, Angelyn *v.*	94
Gervyn *v.* Barton	28
Gilbert and Wyberd *v.* Bath	82
Gloucester, Abbot of, *v.* Lancaster	15
Gosshall *v.* Cobham	62
———, Wrotham *v.*	207
Grandison, Scoland *v.*	186
Hailes, Abbot of, Randolph *v.*	32
Hammil *v.* Chalon	4
Hatchard *v.* Ellis	122
Hereford, Bishop of, Anon. *v.*	201
Herlison, Esthalle and Herlison *v.*	19
Higham, Bainton *v.*	161
Hore, Wybert *v.*	163
Jordan, Bold *v.*	130
Kiriel *v.* Seagrave	88
Lancaster, Abbot of Gloucester *v.*	15
Leanore, Buckland *v.*	9
Lefevre *v.* Brockwell	179
Leicester, Chiche *v.*	181
———, ——— *v.*	184
Long *v.* Shirland	169
Musket *v.* Anon.	45
Norwood, Gatton *v.*	75
Ofheyne *v.* Staplegate	60
Page, Anon. *v.*	54
——, —— *v.*	115
Passeley *v.* Wyveleshergh	126
Pessindenne *v.* Anon.	144
——— *v.* Potter	12
Pickle, Surbiton *v.*	105
Potter, Pessindenne *v.*	12
Randolph *v.* Abbot of Hailes	32
Rem, Walewayn *v.*	38
Ripple *v.* Ripple	58
Russell *v.* Farnborough	146
St. Radegunde's, Abbot of, *v.* Bicknor	216
Sale *v.* Berham	185
Scoland *v.* Grandison	186
Scott *v.* Beracre	23
Seagrave, Kiriel *v.*	88
Seneschal *v.* Adesham	85
Shirland, Long *v.*	169
Simon, Attchapel *v.*	140
Spark *v.* Anon.	44
Staplegate, Ofheyne *v.*	60
Statenborough *v.* Cray	86
———, Cray *v.*	121
Stoke, Anon. *v.*	96
Surbiton *v.* Pickle	105
Twytham, Bereham (Executors of) *v.*	29
Walewayn *v.* Rem	38
Wellington *v.* Brockwell	78
——— *v.* ———	149
——— *v.* ———	153
Wrotham *v.* Gosshall	207
Wyard, Anon. *v.*	170
——— *v.* Fulham	164
Wyberd and Gilbert *v.* Bath	82
Wybert *v.* Hore	163
Wyveleshergh, Passeley *v.*	126

TABLE OF CASES IN VOLUME I.

PAGE

Scoland *v.* **Grandison** . . . **158**

An assize of novel desseisin returns a special verdict as to the truth of a particular fact, and upon that finding the Court bases its judgment that the tenant had disseised the demandant. The jury of attaint finds that the assize made false oath as to the particular fact found by them. Held that such finding by the jury of attaint reverses the judgment of disseisin and reinstates the original tenant in his seisin.

Somerset *v.* **Anon.** **186**

A. goes to S.'s house to levy distress. The door of the house is bolted, but by putting his hand through a wicket A. is able to withdraw the bolt and open the door. He then drives off S.'s cattle. As the door was bolted this was held to be trespass and wrongful distress.

PAGE

Anon. *v.* **Anon.** **187**

When cattle are seised outside the franchise of the Cinque Ports and then driven within the franchise the Justices have jurisdiction to hear a writ of trespass on the facts. *Secus* if the taking be within the franchise.

Moiant *v.* **Anon.** **188**

J. is seised of an enclosed park for three years without disturbance. Forcible entry, even by one who has right of chase or common therein, is park-breaking against the Statute.

TABLE OF CASES IN THE PRESENT VOLUME.

PAGE

Anon. *v.* **Anon.** **1**

A *femme sole* is guardian of an infant heir in socage for three years and then marries. In an action of account in respect of such three years she must be sued jointly with her husband. For the time subsequent to the marriage the husband alone is responsible.

Anon. *v.* **Anon.** **2**

Where the demandant in an action of Ael recovers against the tenant by reason of the tenant's default only he is not entitled to damages; but otherwise if he recover by verdict or upon a point of law.

Hammil *v.* **Chalon** **4**

Where a writ of Cosinage is met by an exception alleging a later seisin than that laid in the writ an allegation of bastardy cannot be made in answer to such exception, but only in answer to a claim to the right.

PAGE

Anon. *v.* **Anon.** **6**

Under a writ of Cosinage the Court allows a voucher which negatives the allegations contained in the writ. But the writ is not thereby necessarily abated; for, in the circumstances, the Court will assist the demandant.

Anon. *v.* **Anon.** **8**

A writ of Cosinage cannot be based on the seisin of a great-grandfather. A writ of *bisael* is indicated.

Buckland *v.* **Leanore** . . . **9**

By affixing his seal to an agreement one who was no original party to it, but was named therein as a pledge for the payment of a certain sum of money, becomes a party thereto and responsible for the payment of the money.

PAGE

Pessindenne *v.* **Potter** 12

A claim for damages for a breach of an agreement touching land held jointly must be brought by all the joint tenants.

The Abbot of Gloucester *v.* **Henry of Lancaster** 15

Question whether a lord of a manor in Wales is barred from answering a writ of *darrein presentment* by the plea that he is not summonable in the King's Court by the fact that he himself has brought an action of *quare impedit* there. The question stands over for production of the record, so that the precise nature of the action may be ascertained.

Anon. *v.* **Anon.** 16

An action for detinue of charters must be met by a direct denial of the facts alleged in the writ and not by the exception that the defendant is seised of the land comprised in the charters.

Esthall and Herlison *v.* **Esthall** . . . 19

An unconditional bond and a conditioned penalty bond for the performance of the same agreement were delivered to G. for safe keeping. The condition was fulfilled, and G. died. The bonds came into the possession of G.'s executors, one of whom was one of the parties to whom the bond was given. The executors can recover upon the unconditional bond, which the defendant cannot deny, notwithstanding that they only hold the bond as executors, and that the defendant has pending a bill of detinue claiming it.

Scot *v.* **Beracre** 23

Question as to what constitutes a binding decision by arbitrators. Case settled.

Anon. *v.* **Anon.** 28

Return by a sheriff is not of record in a claim under Statute Merchant.

Gervyn *v.* **Barton** 28

Where husband and wife lease jointly and the rent is payable to both, both of them must join in suing for arrears.

PAGE

Anon. *v.* **Anon.** 29

Under the customs of Gavelkind liability to answer a claim for debt does not attach till the age of twenty-one years.

Bereham's Executors *v.* **Twytham** . 29

A. bound himself under a penalty of £20 to enfeoff I. of certain lands within a month. I. died within the month, not having been enfeoffed by A. Question whether A. is liable under the bond. *Semble* that he is, if it was through his default that I. was not enfeoffed.

Randolph *v.* **The Abbot of Hailes** . 32

Claim for the price of wool bought by a monk and delivered at the defendant's house, wherein it is said that a writ for debt may be brought in the county wherein the agreement was made or in any other where the defendant has sufficient out of which he may be justiced. Question whether an averment that the wool was used for the profit of the defendant, being an averment of fact that is within the recognition of the county, ousts the defendant from the right to aver that he was no party to the contract.

Anon. *v.* **Anon.** 33

Semble that a writ claiming arrears of rent need not be brought in the county wherein the land lies, but may be brought in whatever county the defendant may most readily be made answerable.

Anon. *v.* **Anon.** 34

In an action for debt a tally cannot be proffered in proof of the debt after suit has been tendered and accepted. In such a case suit should not be tendered, but the tally should be proffered in anticipation of the defendant denying the facts as counted.

Anon. *v.* **Anon.** 35

A tally is evidence of a debt. Its genuineness is a matter for a jury.

Anon. *v.* **Anon.** . . . . 36(1)

The fact of the obligee being in prison at the time of his entering into a bond for sufficient consideration does not make such bond void.

PAGE

Anon. *v.* Anon. . . . 36(2)

Question whether an acknowledgment of a debt in Court is not more conclusive evidence of it than a 'writing' would be.

Anon. *v.* Anon. . . . 37(1)

If a defendant in a writ of debt produce an acquittance and the plaintiff deny it, and at a later stage the defendant make default, the Court will award the plaintiff recovery and taxed damages.

Anon. *v.* Anon. . . . 37(2)

Semble that it is no defence to a writ of debt, where the writing that is evidence of the debt is uncancelled and no acquittance can be shown, to plead a previous recovery of the debt by process of law.

Walewayn *v.* Rem 38

Question as to the sufficiency of a simple denial of indebtedness; also as to the right to withdraw an admission made in Court. Judgment reserved.

Anon. *v.* Anon. . . . 39(1)

Where a loan is proved by the defendant's deed, and he can produce no acquittance, he cannot go to a jury with an averment that the debt has been discharged.

Anon. *v.* Anon. . . . 39(2)

Question as to the Ordinary's power to appoint an executor in lieu of or in addition to the executor named by the testator. *Semble* that an executor, so appointed for sufficient reason, may give a good acquittance.

Anon. *v.* Anon. 40

Where an executor sues for money due to his testator and produces no specialty but proffers suit only the defendant will be received to make his law. *Secus* where the demand is against an executor.

Anon. *v.* Anon. 41

Where a testator appoints four executors all four must be joined as plaintiffs in a writ for the recovery of a debt due to the testator's estate.

PAGE

Anon. *v.* Anon. 42

Question whether a Friar that is an executor can bring an action as executor without joining his Prior. *Semble* that he can.

Brown *v.* Anon. 43

A. acknowledges by deed binding neither his heir nor his executors that he is indebted to B. in a certain sum. A. dies, not having discharged the debt. Question as to the liability of the executors and of the heir.

Spark *v.* Anon. 44

Consideration of the various defences open to a defendant in an action for debt where the plaintiff has no specialty.

Anon. *v.* Musket 45

A., a *femme sole*, acknowledges by her writing that she is indebted to R. She intermarries with W. In an action against W. for the recovery of the debt, R. should not count that A. did not pay him, but that W. had received so much by A. who had received it to W.'s profit.

Anon. *v.* Anon. . . . 48(1)

A husband is not liable under a contract made by his wife during coverture without his knowledge.

Anon. *v.* Anon. . . . 48(2)

Where in a writ of debt against a man and wife jointly the husband makes his law he shall make it in his own name and his wife's in the case where the debt was incurred by the wife before coverture, but in his own name only if incurred by her during coverture.

Bandon *v.* Anon. 48

In an action for debt under Law Merchant, supported by the production of a tally proved by witnesses, the defendant cannot acquit himself by his law.

Anon. *v.* Butterley 50

Where an annual rental is reserved to a lessor for the term of his life an annuity is created, and arrears must be claimed by a writ of annuity and not by a writ of debt.

PAGE

Fitzjohn *v.* **Anon.** **51**

Pledges for the payment of a debt cannot when sued therefor make averment that it has already been discharged by the principal debtors.

Farringdon *v.* **Bray** . . . **52**

Where a man binds himself by a writing to pay money to another without assigning any certain day when the payment is to be made, he to whom it is to be paid may demand payment at any time.

Anon. *v.* **Page** . . . **53(1)**

Question discussed whether a defendant in an action for debt who failed to make his law, having put himself neither upon the Justices nor upon a jury, and against whom judgment is thereupon given for the amount of the debt and for damages, can claim taxation of the damages.

Anon. *v.* **Anon.** . . . **53(2)**

A testament is not the will of the testator but the evidence of it. Where a testament is burnt, the executors named therein may aver that they were the testator's executors and that the will was burnt, and that they administered before the will was burnt and afterwards.

Anon. *v.* **Anon.** **57**

If the defendant in an action for debt offer to wage his law and the Court refuse to let him, he cannot set up any other defence. A tally differs from a deed in that it is more capable of fraudulent alteration.

Ripple *v.* **Ripple** **58**

Where one that is appointed an executor under the name of L. of Ripple is also known as L. the son of Ralph he must when suing as executor sue in the name of L. of Ripple.

Ofheyne *v.* **Stablegate** . . . **60**

All the subsequent proceedings in an action are rendered null by the non-service of the first summons upon the defendant.

PAGE

Gosshall *v.* **Cobham** . . . **62**

Dower brought against a tenant by Statute Merchant. Entry by the husband's acknowledgment is entry by the husband. The tenant under the Statute is entitled to aid from the tenants for life against whom he had recovered, but is not entitled to view where he has entered by the husband and not by the tenants for life.

Anon. *v.* **Anon.** **71**

A husband may not have aid of his wife unless she be in Court by legal process or be herself in peril; but he may vouch himself and his wife jointly in respect of tenements given by her to him before marriage.

Gatton *v.* **Norwood** **75**

The King has taken into his hand the lands of J. by reason of the infancy of his grandson, the son of J.'s eldest son and his heir. The defendants have only a lease at will in the lands. Question whether the demandant who was the wife of J.'s younger son has any right to dower.

Wellington *v.* **Brockwell** . . . **78**

If the tenant of lands liable to dower vouch a stranger to the husband, then the wife shall recover her demand against the tenant, and the tenant shall recover the value from the guarantor. *Secus* where the husband's heir is vouched. In that case the wife will recover against the guarantor, and the tenant will remain undisturbed.

Anon. *v.* **Anon.** **79**

Tenements given to G. and B. jointly. Before division made G. assigns his share to T. T. and B. then divide the land between them; and B. grants his share to W. *Semble* that G.'s widow can recover dower from W. in respect of the land so held by him, notwithstanding that G. alienated before a division was made.

Gatton *v.* **Gatton** **80**

Question of sufficiency of husband's seisin in a claim by the widow for dower.

PAGE

Cobham *v.* **Cray** 81

The whole duration of the Eyre is reckoned but as a single day. A defendant in an action remitted from Bank to the Eyre may therefore sue out the record of his plea in Bank at any time during the Eyre.

Wyberd and Gilbert *v.* **Bath** . . 82

Question of right under Gavelkind decided by a grand assize.

Seneschal *v.* **Adesham** . . . 85

Writ of right remitted by *pone*. The writ says *Adesham*, the *pone* says *Adresham*. Writ abated for variance.

Anon. *v.* **Anon.** 85

Writ of right against a woman remitted by *pone*. The *pone* says *responsurus* where it ought to say *responsura*. Writ abated for variance between writ and *pone* and variance of *pone* from itself.

Statenborough *v.* **Cray** . . . 86

A *precipe in capite* can only be brought of land held from the King in chief.

Chiche *v.* **Canterbury** . . . 87

A writ is removed by a *pone* before the Justices. The *pone* being abated the writ is abated *ipso facto*.

Kiriel *v.* **Seagrave** 88

A fine levied between the tenant of lands and another, to which the lord is no party, cannot affect the lordship or the right of the lord.

Anon. *v.* **Anon.** 92

A husband cannot lease to his wife.

Anon. *v.* **Anon.** 93

When a tenant has vouched and been warranted he cannot afterwards take exception to the form of the writ.

Angelyn *v.* **Geddinge** . . . 94

Where a demandant has two recoveries open to him he may use either of them.

PAGE

Anon. *v.* **Stoke** 96

Semble that an heir is not necessarily bound to warrant by his ancestor's deed.

Attewell *v.* **Cobham** . . . 97

Question of joint-feoffment of husband and wife.

Anon. *v.* **Anon.** 101

Semble that an infant tenant is not entitled to his age in a writ of entry in the *per*, but *secus* if in the *post*.

Achard *v.* **Bertelot** 103

In setting out his title in counting a demandant should not name anyone through whose seisin he does not claim, and any consequent variance between the writ and counting will not abate the writ.

Surbiton *v.* **Pickle** 106

A clerk convicted by inquest of office and remitted to the Bishop's prison is vouchable to warranty.

Anon. *v.* **Anon.** . . . 111(1

A summons in a plea of land must not be served by a bailiff but by two substantial freeholders, and if it be served by a bailiff it is null and any subsequent proceedings are void.

Anon. *v.* **Anon.** . . . 111(2)

Land in demand must be laid in a town. If it is laid in a district the writ will abate.

Anon. *v.* **Anon.** 112

If a party who is ordered to continue appearance *de die in diem* does not answer when he is called he will have the same judgment as one who makes default on an assigned day.

Anon. *v.* **Anon.** 113

In a *cui in vita* brought on the seisin of the demandant's mother to recover land leased by his father where the tenant tenders a deed of the mother warranting the land to him, the demandant must answer such deed before traversing the lease.

PAGE

Anon. *v.* **Page** 115

Semble that where a writ of entry is brought against two joint-tenants, one of whom disclaims all interest in the land claimed, the other is entitled to a view.

Anon. *v.* **Anon.** 116

A. brings a writ of entry against B., a woman, whom he then marries. He recovers the land through her persistent default. B. obtains a divorce from A. and seeks to recover the land. Held that no default made by her while she was *coverte* ought to be to her prejudice after divorce decreed.

Anon. *v.* **Anon.** 117

A writ of entry *ad terminum qui preteriit* where it is alleged that the tenements claimed were leased by the wife alone will abate if it appear that they were leased by her and her husband jointly.

Anon. *v.* **Anon.** 119

A disclaimer by a tenant in person cannot be traversed. *Secus* if by attorney.

Cray *v.* **Statenborough** . . . 121

Where a demandant in Eyre fails to appear *de die in diem* after issue joined, he will be held to be in contempt, and his writ will be abated by judgment, for the whole Eyre forms but one day.

Hatchard *v.* **Ellis** 122

Where in a writ of entry the tenant traverses the entry laid in the writ he must allege another; and if he allege another entry he must first deny or admit the entry laid in the writ.

Passeley *v.* **Wyveleshergh** . . 126

An averment by a demandant against the tenour of her own admitted deed is of no value.

Bold *v.* **Jordan** 130

A *profit à prendre* may be recovered from one that is not lord of the soil by a *precipe quod reddat*. *Semble* that the *precipe quod permittat* lies only against the lord of the soil.

Esling *v.* **Essington** 136

An omission in the descent will not abate a writ of entry where it does not appear that the omitted predecessor in title executed any deed that would be in bar of the action. *Secus* in a writ of right.

Attchapel *v.* **Simon** 140

Infant tenants who claim to have entered as upon their heritage cannot be parties to an averment by the demandant that they entered otherwise.

Anon. *v.* **Anon.** 142

In a *cui in vita* where the tenant vouches to warranty three brothers, one of whom is under age, the widow shall recover at once under the Statute against the tenant, but the tenant must wait the full age of all the vouchers for his warranty.

Anon. *v.* **Anon.** . . . 144(1)

Question whether the infant children of a deceased father from whom aid is sought by their mother in a *cui in vita* brought against her can have their age allowed.

Anon. *v.* **Pessingdenne** . . 144(2)

In a *cui in vita* brought against a tenant that is assignee of him to whom the husband alienated the tenant vouches the husband's infant heirs. Question whether the wife must await their age. *Semble* that the case falls under the Statute, and that she ought not to be delayed.

Russell *v.* **Farnborough** . . . 146

Question whether the descendants of a sister of the whole blood are preferred to sisters of the half-blood.

Aspaile *v.* **Aspaile** 147

Semble that if in a *cui in vita* the demandant alleges in her writ that the land demanded was her right by the gift of two donors the writ would be bad it if appeared that she had naught by the gift of one of these.

PAGE

Wellington *v.* Brockwell . 149 and 153

In a *cui in vita* brought against a husband and his wife, where the husband makes default after default, the wife may be received to defend her right if she be not warranted in it; but if she be warranted she will not be received.

Bainton *v.* Higham 161

A plea of exchange is a good answer to a writ of entry. Land received in exchange for other land binds to warranty.

Wybert *v.* Hore 163

In a *cui in vita* where the tenant vouches a husband and his wife, and the husband is joined only by reason of coverture, and the husband makes default after default, the wife will be received to warrant and plead alone.

Wyard *v.* Fulham 164

Writ of entry abated by production of demandant's deed by which he released and quitclaimed any right he might have in the tenements demanded.

Anon. *v.* Anon. 166

The writ in a *cui in vita* claims two acres of land. The tenant claims a view. Two acres short of one rood are put in view. One R., not named in the writ, is found to be tenant of the one rood. The Court gave judgment that the demandant take nothing by his writ.

Bug *v.* Buckland 167

Recovery of pasture. The *quod permittat* lies only against a deforciant that is lord of the soil. Against all others the *quod reddat.*

Anon. *v.* Anon. . . . 168(1)

Question whether land demanded by a *cui in vita* was the gift of one donor or of two.

Anon. *v.* Anon. . . . 168(2)

Where the entry laid in the writ is traversed, some other entry must be alleged. *Secus* where a lease is traversed.

PAGE

Long *v.* Shirland 169

No mention made in the recitals of a *pax* that the tenant was tenant in demesne of one part of the tenements, and tenant by his warranty of another part.

Anon. *v.* Wyard 170

The demandant in a writ of entry cannot be barred from averring that she entered as her writ alleges by the production of a deed to which neither her alleged predecessors in title nor their ancestors were party.

Anon. *v.* Statenborough . . . 171

Question as to what tenements were included in a fine.

Detling *v.* Bakewell . . . 173

Entry *sur disseisine* where it is found that the alleged disseisor did not in fact disseise the demandant.

Baldwin *v.* Bakewell . . . 175

An assignment to hold in common with him by the heir to his mother by way of dower is endowment by the husband such as to give the wife entry by her husband.

Lefevre *v.* Brockwell . . . 179

Semble that the *Statute of Westminster II*, cap. xlvii., does not apply to heirs that are vouched and that action must be delayed till they attain their age.

Chiche *v.* Leicester 181

Where a guardian takes feoffment of his ward that is under age he becomes a disseisor.

The Same *v.* The Same . . . 184

If an infant lease he may recover by a *dum fuit infra etatem.*

Sale *v.* Berham 185

The letter of a deceased Bishop testifying the excommunication of a plaintiff is of none effect.

PAGE

Scoland *v.* **Grandison** . . . **186**

A writ basing the demandant's right of action upon a title that has been found bad by a jury in an attaint is not entitled to an answer.

Anon. *v.* **Anon.** **200**

The demandant in an action of formedon in the *descender*, not being the heir of the donor, is not bound to answer the donor's deed. *Secus* in formedon in the *reverter*.

Anon. *v.* **Bishop of Hereford** . . **201**

A fine may not be levied in respect of tenements held in fee tail.

Anon. *v.* **Anon.** **204**

The Court allows a vouchee to be summoned in two counties.

PAGE

Anon. *v.* **Coxton** **205**

A writ of warranty of charter is given in lieu of a voucher; and under it land may be recovered equal in value to the land lost through the default of the vouchee.

Wrotham *v.* **Gosshall** . . . **207**

Warranty of a manor includes warranty against liability to pay a rent-charge.

Anon. *v.* **Anon.** **214**

Question on the construction of *Statute of Westminster II*, *c.* ix., touching the procedure in mesne.

The Abbot of St. Radegunde's *v.* **Bicknor** **216**

It is not sufficient in a writ of mesne that a plaintiff claim to hold certain tenements by 'fealty and military service etc.' He must say that he holds them by 'homage' also.

INDEX OF MATTERS

(The letter *n.* following the number of a page indicates that the reference is to a note from the Eyre Roll or a footnote on that page.)

Abatement of writ by consent or by judgment, difference of consequences between, 141
Account. *See* Table of the Forms of Action
————, bill of, against husband and wife jointly, 1, 2
— ———, of profits of infant's land, 1, 2
Acknowledgment made in Court, effect of, 37
Acquittance, writ of, 211, 212
Action, right of, not partible, 215
Admeasurement of Pas'ure, 2
Administration. *See* Executors and Administrators.
Administrators. *See* Executors.
Admission made in Court, effect of, 39
Ad terminum qui preteriit. See under Entry *in* Table of the Forms of Action
Advowson, an, does not rank as demesne, though it is claimed by a *precipe quod reddat*, 132, 133, 134
Ael. *See* Table of the Forms of Action
——, damages in, recoverable only after judgment founded upon a verdict or point of law, 2
Age, 101, 102, 140–5, 160
Agency, 32, 33
Agent, contract by, 33
Aid, 44, 63, 64, 67, 69, 70–2, 74
Amicus curiæ, 4 (*n.*), 7 (*n.*), 115 (*n.*)
Ancient demesne, pleading in court of manor of, 15
Anglo-French orthography, mediæval treatise on, xliii, *et sqq*
Annuity, 128
Annuity, damages for withholding of, 2
————, damages recoverable from time of withholding until judgment, 2
————, debt of the nature of, 50
Arbitration and Arbitrators, 23–7
Archbishop, letter from deceased, testifying excommunication, is without authority, 185
Archbishop's palace in Canterbury, xlii
Assize, grand, xviii, 4, 5, 86, 87
Attachment, writ of, 28
Attaint may be brought on a special fact found by a jury, 189, 193, 197
Attewell *v.* Cobham, xviii
Attorney, cannot disclaim nor make admissions, 120
————, can surrender, 120
Attorneys, how appointed, 55
————, how they differ from executors, 55
Auditors, 1
Averment, parties cannot make, against their own deed, 127
————, statutory, 72, 73, 75

Babe, unborn, how it must be vouched, 106, 108, 110
Bailiff cannot serve summons in a plea of land, 111
Baldwin *v.* Bakewell, xx
Bandon *v.* Anon., xvii
Bastardy, cannot be tried under a possessory writ, 4
Battle and Grand Assize, 4, 5, 86, 87
Bereham *v.* Twytham, xv

Bigamis, de, Statute. *See* Table of the Statutes
Bill of Middlesex, xxii
Bills in Eyre, almost invariably written in Anglo-French, xxii
————, contents of, xxiii
————, Court may amend, xxvi
————, date of, xxii
————, endorsement of, xxiv, xxv, xxix
————, examples of, xxiii, xxiv, xxv, xxvi, xxvii, xxix
————, facts entitling to remedy, ought to be stated in, xxvi
————, heard by a single judge, xxx
————, no special form necessary, xxvi
————, pledges to prosecute, xxvi, xxix
————, procedure by, xxix
————, remedies prayed by, xxv
————, ————, through whom prayed in, xxv
————, their material form, xxii
————, to whom addressed, xxii
————, ———— delivered, xxix
Bisael, writ of, 8
Bond given by one in prison, 36
Bonds, 9, 10, 11, 12, 19, 23–7, 28, 30, 215
———, for debt, 215
———, to husband and wife, 28
———, penalty, 23–7, 30
Bracton, citation of precedents by, xxxv, xxxvi
————'s Note Book, xxxvi (*n.*), xli
'Breaking bulk,' xxvii
Buckland *v.* Leanore, xvii
Busones, the, xxi

Cape ad valenciam, 112, 163, 202, 204, 205
Cape, grand, 116
——, petty, 3, 112, 122
Capias, 185
Certiorari, xx, 28
Cessavit, 3
Chancery, value of land certified to the, 77
Charters, 16, 17, 18, 21
————, delivery of, and of seisin, by demandants is a good answer in bar of action for detinue of, 77
Charters, detinue of. *See* Table of the Forms of Action
————, possession of, is necessary to enable vouchee to vouch over, 16, 18
Circumstances, new, call for changes in the law, 67, 70
Clerk, attainted, and delivered to the Ordinary, how far he is outside the law, 106–11
———, ———— in Bishop's prison, voucher of, 105–10
———s of the Court receive part of damages, 11 (*n.*)
———— Eyre, xxxiv
———— receive gloves, xxxiv
Cobham *v.* Cray, xvii
Common of pasture, a stranger's right to a writ against the lord, 2
————, grantee by specialty need not wait for seisin, 3
Consilio Curiæ, de, xvi
Consultation by counsel, 119
Contempt of Court, tenant's, is a reason of judgment for demandant, 112, 113, 122
————, by non-appearance, 112, 113, 122
Contract by an agent, 33
————, pledges for completion of, bound by merely affixing their seals, 10
———— to build two mills at Maidstone, 9
———— enfeoff within a limited time, 30
———— marry, 30
———— protect land from invasion by the sea, 12
Copyists, inaccuracy of, xxxv, xxxix, xl
————, variations by xxxv (*n.*)
Coroner, process directed to, 98 (*n.*)
Cosinage. *See* Table of the Forms of Action
————, writ of, cannot be supported by seisin of great-grandfather, 8, 9
————, must be brought upon seisin of last seised, 5
Counsel confer, 118

Counterpleader of voucher, 8
———————— on a point of law, 203
———————— on the main issue, 203
Court Christian, pleadings in, must be in writing, 25, 27
——, official assistance of, 8, 102, 141, 204
Covenant. *See* Table of the Forms of Action
Cui ante devorcium. See under Entry *in* Table of the Forms of Action
—— *in vita. See under* Entry *in* Table of the Forms of Action

Damages, 2, 11, 14, 20, 23, 37, 54, 202, 206, 207
————, at discretion of Court, 23, 207
———— for withholding annuity, 2
————, payable by warrantor who fails in his warranty, 202
———— under an admitted bond, assessment of, a matter for the Court's discretion, 23
Darrein Presentment. *See* Table of the Forms of Action
Dating of writs, loose practice in regard to, 88 (*n.*)
Debt. *See* Table of the Forms of Action
——, action of, when it should be brought against the heir, 43, 44
——, a mill received in satisfaction of, 39
—— due under a bond to two persons is recoverable in full by survivor, 28
——, proof of, 28, 32, 34, 35, 40, 43, 53, 54
—— savouring of an annuity, 50
——, wife's, 44, 45, 48, 57
——, without specialty, courses open to defendant in action of, 45
——, writ of, against husband and wife, 44, 48, 57
Default after essoinment, 37
Defence, a negative, 36
————, sham, 156
Delivery for the use of defendant, 32
Demand must be laid in a town, 111
Demandant marries tenant subsequently to purchase of writ, and recovers against her by default, 116
De presentibus vocatis. See Table of the Statutes
Descent, omission in, 136, 138
————————, exception of, lies properly only in writ of right, 140
————————————, how challenged, 138, 139
Detinue of Charters. *See* Table of the Forms of Action
Discontinuance of plea, 64, 68
Disseisin by joint-feoffee, 97, 98, 99
Disseisor, guardian taking feoffment of his infant ward becomes a, and may be sent to prison, 181, 183
Dower. *See* Table of the Forms of Action.
————, aid not usually granted in, 67, 70
————, cannot be claimed in respect of land held in common, 80
————, how it may be held in common, 178
————, in what case the wife will recover against the tenant, 79
————, ———————— vouchee, 79
————, plea of, infant warrants at once in, 201
Droit. *See* Table of the Forms of Action
Dum fuit infra etatem. See under Entry *in* Table of the Forms of Action

Ejectment from Wardship. *See* Table of the Forms of Action
England, Law of. *See* Law of England
Entry. *See* Table of the Forms of Action
————, allegation of, how traversed, 160, 169
————, writ of, alleging a lease, two issues upon, 105
Equitable jurisdiction, Bills in Eyre the beginning of, xxxviii
Exception of last seised, 4, 5
————————s, order in which they should be made, 38
Exchange of land, 161, 162
————————————, binds to warranty, 162
————————————, good answer to action, 162

Excommunication. *See* Table of the Forms of Action
————————, certificate of, 185, 186
Execution for unsatisfied judgment in Eyre got in King's Bench, 20 (*n.*)
Executor appointed by Ordinary in supersession of sole executor appointed by testator, xvi, 40
————, both plaintiff and defendant under different names, 58
————, defendant in action brought by, may be received to his law, 41
————, demandant must produce specialty in action against an, 41
————, difference of procedure in actions by and against an, xvi
————s, actions against, 43, 45
————, actions by, 39 (*bis*) 40, 41, 42, 54, 58
————, alleged tortious act of, 16, 19, 21
———— and administrators, 16, 19, 22, 28, 29, 30, 31, 39, 40, 41, 42, 43, 45, 48, 54, 55, 56, 57, 58, 59
————, bills pending against, 19, 22
————, Court favourable to, 59
————, proof of appointment of, 55
————, three out of four cannot sue without fourth, xviii, 42
Executorship, proof of, when will has been burnt, 55–7
Extent, 66, 67
Eyre, adjournment of, over August, real reason of, xlii
——, bills in. *See* Bills in Eyre
——, clerks of the, xxxiv
——, hearing remitted from Bank to, 170
——, the principle of the, is to expedite every man, xx, 205
——, the whole, constitutes but a single day, xvii, 81, 82
Eyre of Gloucestershire, xxx
———— London, xv, xxvi, xxvii, xxviii
———— Northamptonshire, xxviii
———— Nottinghamshire, xxvii
———— Suffolk, xxi

False concord, writ abated by reason of, 86
Fine, 19, 21, 89, 90–2, 164–6, 170–1
Fine, no bar to averment by one not a party to it, 170
Formedon. *See* Table of the Forms of Action
————, in the *descender*, 200, 201
————, —— *reverter*, 186–200

Gavelkind, 29, 82, 83, 92, 172 (*n.*), 184 (*n.*)
Gloucester, Statute of. *See* Table of the Statutes
Gloves, clerks of the Eyre receive, xxxiv
Grand Assize, xviii, 4, 5, 86, 87
————, election of, xviii, 83
————, right of challenge to, 83
Guardianship by nurture of other than parent, 182
Guildhall of London, xxvi (*n.*)

Half-blood, claim by sisters of the, 146
Hammil *v.* Chalon, xi
Heir, when he will have aid from executors, 44
Homage, 216
Hospitaller, horses for a, 52
Husband and wife, bill of account against jointly, 1, 2
————, writ of debt against, 44, 48, 57
————, default of, 150–9, 163
———— joined by reason of coverture only, 163

Illegitimacy, xii
Imparling, 21, 22, 100, 101
Imprisonment, 214
————, by warrant, a matter of avowry, 214
————, fact of, only, to be inquired of under writ of, 214
Infancy. *See* Age
Infant is answerable on attaining his age for what he has received to his profit during infancy, 46
————, lease by, 181–184
———— purchaser may answer and have battle and grand assize, 208, 211
————, so adjudged after inspection by the Court, 160

Infant, warrants at once in plea of dower, 201
———'s deed is his guardian's, 181, 183
Inquirendi, writ of, 215

John Fesrekyn, his hard case, xxix
————————, promises to pray in the Holy Land for Sir John Berewick, xxx
Joint-feoffee, disseisin by, 97, 98, 99
————————, disseising of, 97, 99, 100
————tenant cannot claim damages for breach of agreement touching land held in common, 14
————————s, a *precipe quod reddat* against, abates if one of them die, 84
————————, writ against, where one has naught, 147
————————, writ of novel disseisin against, does not abate if one die, 84
Judgment, a strange, 166, 167
———— of a possessory writ pleaded in bar of a writ of right must be admitted or denied, 190, 193, 194
Jury disagree, 121
—— given in charge of the sheriff, 121
—— retire to consult, 121
Justicies, writ of, 48, 49

King's Bench, execution for unsatisfied judgment in Eyre got in, 20 (*n.*)
——— writ, course of, in Wales, 15

Land, charge upon, when it passes with the land, 213
Last seised, exception of, 4, 5
Latest Presentation, 15
Law Merchant in Eyre, 49
—— of England, tenant by the, 68, 70, 94, 95
Lease by an infant, 181–184
———, traverse of, 169
London, seal of the mayor and clerk of, 28

Magna Carta. *See* Table of the Statutes
Manor in Wales, only the lord's writ runs in a, 15
Manor, rent-charge on, covered by warranty of, 211
———, severed parcel of, re-attachable by the lord to the gross by writ at common law, 15
———, warranty of, what it includes, 208
Marriage, breach of promise of, 129, 130
————, consideration for. *See causa matrimonii prolocuti, under* Entry *in* Table of the Forms of Action.
————, land demised in consideration of, 126, 127, 129
Mesne, 214, 215, 216; *and see* Table of the Forms of Action
———, procedure in Eyre, 215
Middlesex, bill of, xxii
Mills, contract to build, at Maidstone, 9
Mispleader, infant's writ cannot be abated by, 7, 8
Mortdancestor, 94, 108, 109, 110

Neutral party, bond deposited with, 19, 21
Newgate gaol, xxvi
————————, dungeon in, used as a means of extortion, xxvii
————————, gaoler of, xxvi
Nisi prius, 49
Nonage. *See* Age
Note-Book, Bracton's, xxxvi (*n.*), xli
Nurture, 1
————, guardianship by, of other than parent, 182

Official assistance of Court, 8, 102, 141, 204
Omission in descent. *See* Descent, omission in
Opinion of many in Court as to the form of an exception, 34
Ordinary, answerable for intestate's debts, 56
————, appoints executor, 40
————, cannot sue for debts due to intestate's estate, 56
Orthography, Anglo-French, mediæval treatise on, xliii
Outlaw, voucher of, 109

Parceners, 84, 142, 143, 165, 214, 215
————, constituting a single heir, 142, 143, 165, 215

Parceners, the death of one of them abates assize of novel disseisin brought against them, 84
Pasture, Admeasurement of, 2
———, claimed as though it were demesne, 130–136, 167
———, Common of, 3
Pax, 169, 170; *and see under* Entry *in* Table of the Forms of Action
Penalty and usury only irrecoverable when they grow out of the sum in which the obligee is primarily bound, 27
——— for non-payment of debt not enforceable, 25, 27
Pernours, 61, 62
Pessindenne *v.* Potter, xix, xx
Plea, discontinuance of, 64, 68
——, sham, 155
Pleading, 9, 18, 32, 34, 35, 38, 41, 45, 46, 47, 53, 96, 101, 103, 114, 115, 116, 118, 123, 124, 125, 171, 175
Pledges, action against, 51
———- bound as principal debtors, 50, 51
Plough-land, 3, 178
Pone, 85, 86, 87, 88
Possessory writ, none to be named in, except such as are necessary for proving the descent, 9
——— peremptorily abated by a claim to the right, 4
Precipe in capite, 86, 87
——— *quod reddat* brought by three demandants against three tenants, 84
——— *redditum* does not lie against a tenant, 86
——— lies against him that receives the rent, 86; *and see* Writs
Presentation, Latest. *See* Table of the Forms of Action
Prior, not named in writ brought by one of his friars, 42
Process directed to Coroner, 98 (*n.*)
Purchaser, infant, may answer and have battle and grand assize, 208
Quare impedit, writ of, 15
Quia Emptores. *See* Table of Statutes
Qui dat adversario suo juramentum facit adversarium suum sibi judicem, 54, 54 (*n.*)
Quod permittat, 131, 132, 133, 134, 135, 167
———-, lies only against the lord of the soil, 167

Recoveries, a demandant may choose between two, 94
Recovery in assize of novel disseisin, effect of, 192, 196, 198
——— of value, 204, 206, 207
Rent-charge, damages recoverable from time of ceasing of payment until purchase of the writ, 2
——— is not rent-service, 211
——— on a manor is covered by warrantry of manor, 211, 213
Rent-service of one rose, 164
Replegiare, 88, 89
Resort, 8, 122, 125
Right. *See* Table of the Forms of Action
Ripple *v.* Ripple, xvii
Roll, inspection of, 158
——s, Mayor's and Sheriffs' carelessness as to collection of, xvi
Romanist maxim, apparent misapplication of by Sigurnel J., 54 (*n.*)
Rose, rent-service of a, 164

Scriptoria, xxxviii, xli
Scutage, 216
Sea, contract to protect land from invasion by the, 12
Seal, effect of, 57
——— affixing by a surety for the carrying out of a contract, 10, 12
Serjeants give their opinion, 93, 119, 172
Sham defence, 156
——— plea, 155
Sheriff, return by, when not of record, 28
———s' and Mayor's rolls, carelessness as to collection of, xvi
Sicut alias, 204
Socage land, 1
Statute Merchant. *See* Table of the Statutes

Statutes. *See* Table of the
Statutory averment, 72, 73, 75
Suit, merely evidence in proof of a contract, 41
Summoners, 61, 62
———— must be tenants of land, 61
Summons in two counties, 204
————, non-service of, 60, 61, 62
———— *sicut alias*, 204
Sur disseisine. *See under* Entry *in* Table of the Forms of Action
Sureties for the execution of a contract are bound by simply affixing their seals, 10, 12

Tallies, xiii, xiv, xv, 34, 35, 49, 57, 58
———, erasure of, 35, 58
Tally, a, how it should be pleaded, 35
————, is not a pure deed, 38
————, without date, not answerable, 35
Testament, a, is evidence of the will, 57
Title, irregular, may be protected by assize of novel disseisin, 178
Toleresse, 5
Tolt, 87
Town and district, distinction between, 111
——, demand must be laid in a, 111
Traverse, must be definite of a definite allegation, 38
Trunc, used for living body, xxiv (*n.*)

Usury. *See* Penalty and usury
——, distinction drawn between, and penalty for non-payment of a debt, 25, 27

Value, recovery of, 204, 206, 207
Variance, 85 (*bis*), 86
———— of copyists, xxxv (*n.*)
View, 62, 65, 69, 71, 75, 95, 116, 175
Viewers, 62
Vouchee in a foreign country shall have a writ from the Justices to summon his warrantor, 205
Voucher, 6, 7, 8, 16, 63–4, 67–8, 70–74, 78, 102, 105–110, 201–3
————, by man of his wife, will not be received unless he show good cause or for certain definite reasons, 71, 72
————, by three jointly, 64, 68, 70
————, counterpleader of, 8
Voucher, counterpleader of, on a point of law, 203
———————— on the main issue, 203
————, fails to appear, 112, 113, 202
————, of outlaw, 107, 108, 109, 110
————, of self and wife, 71, 72, 74
————, of unborn babe, 106, 108, 110
————, writ of warranty of charter granted in lieu of, 206, 207

Wager of law, by husband and wife jointly, 48
————, by husband only, 48
Wales, the lord's writ only runs in a manor in, 15
Wardship, 1, 81
————, ejectment from. *See* Table of the Forms of Action
————, husband not liable to account for wife's, for the time before marriage, 1, 2
Warranty. *See* Table of the Forms of Action
————, not partible, 142
———— of a Manor, what it includes, 208
———— of charter, 13; *and see* Table of the Forms of Action
————, writ of, granted in lieu of a voucher, 206, 207
————s. *See* Table of the Forms of Action
Wellington *v.* Brockwell, xix
Westminster, Statutes of. *See* Table of the Statutes
Wife, husband cannot, during coverture, give or grant aught to, except dower, 29
—— may be received to defend her right, but not to abate writ, 128
—— must be named along with husband in writ to recover rent of land leased by them jointly, 29
—— prays to be received in default of her husband, 150–9
——, recovery from, by default by husband, 116
——, when she may make default, 84
——'s debt, 44, 45, 48, 57

Writ, abatement of, by consent or by judgment, difference of consequences between, 141
——, addressed to sheriff of another county than that in which the cause of action arose, 32, 33, 34
—— based upon a title that has been found bad is not answerable, 189
—— may be brought in any county where the defendant can be justiced, 32, 34
——, the king's, course of, in Wales, 15
——s, abatement of, difference between older and later practice, 32
——, acquittance, 211, 212
——, *Cape ad valenciam*, 112, 163, 202, 204, 205
——, *Cape* (grand), 116
——, —— (petty), 3, 112, 122
——, *Capias*, 185
——, *Certiorari*, xx, 28
——, dating of, loose practice in regard to, 88 (*n.*)
——, extent, 66, 67
——, *inquirendi*, 215
Writs, *justicies*, 48, 49
——, *mortdancestor*, 94, 108, 109, 110
——, *nisi prius*, 49
——, *pone*, 85, 86, 87, 88
——, *precipe in capite*, 86, 87
——, —— *quod permittat*, 131–5, 167
——, —— *reddat*, 84, 86, 132–136, 141, 167, 168
——, *quare impedit*, 15
——, *replegiare*, 88, 199
——, tolt, 87
——, warranty of charter, 13; *and see* Table of the Forms of Action
Wyberd and Gilbert *v.* Bath, xviii
Wye, actions arising within franchise of, triable only within the franchise, 171

Year Book in possession of Sir John Maynard, xl
Year Books, authorship of, xxxi–xlii
——, absence of any serious attempt at correction in, xl

INDEX OF PERSONS AND PLACES

(The letter *n.* following the number of a page indicates that the reference is to a note from the Eyre Roll or to a footnote on that page.)

Abbot of Battle, 170, 186
———— Gloucester, 15
———— Hailes, 32
———— Launceston, 87
———— St. Augustine's, Canterbury, 216 (*n.*)
———— St. Radegunde's, 216
———— Stratford, xxvii
———— Warden, 102, 141
Acharde, Richard, 103
Adesham, 85
————, Thomas of, 85
Angelyn, Christina, 94
————, Simon, 94, 95
Aspaile, Juliana, 147
————, Robert, 147
Aston, W. of, 170
Astwick (Attesweke, Ewekt), 21
Attechapel, Richard, 140
————, William, 140
Attenoke, Simon, 149 (*n.*)
Attewell, John, xlii, 98
————, William, 97
Aunsel, Roger, 17

Backhouse, William of, 42
Badelsmere, Bartholomew of, 75 *et sqq*
Baker, Gilbert, 126
————, Jordan, 127
Bakewell, Alice of, 175
————, John of, 173, 175, 176, 177
Bakewell, Thomas of, 173 177
Baldwin v. Bakewell, xx
Bandon, John of, 48
Barton, John of, 28
Baspal (Haspal, Aspaile), Robert of, 148
Bate, Agatha, 180 (*n.*)
——, Stephen, 180 (*n.*)
Bath, Walter of, 82
Battle, Abbot of, 170, 186
Baynton (Bauynton), Gilbert of, 162 (*n.*)
————, John of, 162 (*n.*)
————, Thomas of, 162 (*n.*)
Beane, Thomas, 60
Beauxfield (Beausfeld, Beauwesburgh), 216 (*n.*)
Beracre, Hamon of, 23–26
Bereham, Isabella of, 29
————, John of, 29 (*n.*)
Bergate, Edmund, 103
Berham, Nicholas of, 185
Bertelot, Cecilia, 104 (*n.*)
————, Simon, 104 (*n.*)
Bicknor, John of, 216
Bigland, William of, 133
Blacklock, Robert, 60
Boilande, Richard de, xxviii (*n.*), xxx
Bold, John, 130, 131, 133
Bone, Alexander, 60
Bourne, James of, xix, 78, 150–5, 158–9
Brabazon, Sir Roger, 117
Brampton, William of, xxvii
Bray, Richard, 52
Bretham, John of, xxvii (*n.*)
Brockwell, William of, xix, 78, 149–59, 179, 180 (*n.*)
Brook, Richard, 147
——, Thomas, 147
Buckland (Bokeland), John of, xii, 8, 11
———— W. of, 167
Bug, John, 167
——, Maud, 167
Butterley, John of, 50

Cadwallader, the King's Manor of, 15
Canterbury, xlii, 17, 23, 49, 60, 61, 94, 104 (*n.*), 124
————, Archbishop of, 185
————, Bailiffs of, 87
————, Christchurch, Prior of, 82
————, John of, 87
————, Palace of Archbishop of, xlii
————, Saint Augustine's, Abbot of, 216
————, Simon the cutler of, 17

Cantley (Chanclie), John of, 87
Carpenter, Richard, xxiv
Cerne, Nicholas of, xxvii
Chaldane, Thomas of, 85
Chalon, John, 4
Chart, Little, 180 (*n.*)
Chiche (Cuth), Hugh, 181, 184 (*n.*)
————————, John, 181–184
————————, Stephen, 181, 184 (*n.*)
————————, Thomas, 87
————————, William, 181
Clerk, William, 112
Cobham, Master James of, 62 *et sqq*
————, John of, 172 (*n.*)
————, of Rowdale, Sir Henry, xvii, xlii, 81
Cokyn, William, 17
Colton, John of, 133
Colwyn, Walter, 11
Cotingham, John of, 136
Coxton, Richard of, 205
Cramford, William, 11
Cray, Simon of, 121
——, Sir William of, xvii, 81
——, William of, 86, 78
Criol, John of, 201
Cryals (Criol), 201

Daniel, Robert, 172 (*n.*)
Derby, W. of, 80
Detling, John of, 173
————, Maud of, 173
Dewope, Robert, 76
Dorrey, 103
Dover, 216
Durnford, William of, xxx
Dyen, Agnes, 146
——, Roger, 146
——, Simon, 146

East Langton, 216 (*n.*)
Ellis, Richard, 103
——, Roger, 122
Eltham, Manor of, 86, 87
Ensyng, Ralph of, 23
Esling, Ralph of, 136 (*n.*)
Essington, John of, 136
Esthall, John of, 19 *et sqq*
————, Richard of, 19 *et sqq*

Farringdon, Michael of, 52
Faulkener, William, 42
Fesrekyn, John, xxiii, xxiv
Field, Simon of the, 201 (*n.*)
Fitzjohn, Richard, 51
Folkeston, John of, 169
Fulham (Felsham), Adam of, 164
———— Thomas of, 164, 166
Fyvens, Robert, 88 *et sqq*

Gatton, Edmund of, 76, 77
————, H. of, 75
————, Hamon of, 80
————, John of, 77, 78
————, Robert of, 80
————, William of, 80
Geddinge (Godyn, Godelyn, Goldinge), Roger of, 94, 95
Gervyn, Luke, 28
————, Joan, 28
Gilbert, Thomas, 82
Gloucester, Abbot of, 15
Gloucestershire, Eyre of, xxx
Goodnestone (Gussetone), 216 (*n.*)
Goodrich, Alice, xxv
————, Robert, xxv
Goosegrey (Gosshall), John of, 65 *et sqq*
Gosshall, Henry of, 207, 212 (*n.*)
————, John of, 62 *et sqq*
————, Manor of, 62
Grandison, Otho, 187 *et sqq*
————, William, xix, 186 *et sqq*
Graneges, John, xxiii

Hackington, 98
Hade, John, 60
Hailes, Abbot of, 32
Hammil, Geoffrey, xi, 4
Hammil (Haumle), Robert of, King's Clerk of the Rolls, 122 (*n.*)
Hampton, John of, 200
Handlon, John of, 98
Hatchard (Achard), Richard, 103, 122, 124
Havering, William of, 164, 165
Hengham, Ralph of, 88 (*n.*)
Hereford, Bishop of, 201
Herlison, Richard, 19 *et sqq*
Heuwette, G. of, 19
Higham, Gilbert of, 161
————, John of, 161
————, Roger of, 139, 161
————, Thomas of, 161
————, William of, 23
Hoo, 111
Hopton, Walter of, 133
Hore, Mabel, 163
——, W. 163
Horton *juxta* Dartford, 186 (*n.*)
Horton, William of, 212
Huntingdon, Ralph of, xxiv

Ightham, 82
Ireland, John of, 170

Jordan, John, 130, 131
————, Richard, 130, 131

Kemesing, Manor of, 190 (*n.*)
Kiriel, Nicholas, 88 *et sqq*
————, Robert, 90
Knotte, Gregory le, xxiii

Lancaster, Henry, brother of the Earl of, 15
Launceston, Abbot of, 87
Lefevre, John, 179, 180 (*n.*)
————, Roger, 179, 180 (*n.*)
Leicester, Alice of, 182 (*n.*)
————, Christina of, 181, 182 (*n.*)
————, Roger of, 181
Leimer, Edmund le, xxvi (*n.*)

Leukenore (Leanore), Roger, xii, xiii, 9, 10
Leyburn, Juliana of, 98
Littlebourne, 162 (*n.*)
Little Chart, 180 (*n.*)
London, City of, 28
———-, Eyre of, xv, xxvi, xxvii, xxviii
———-, Guildhall of, xxvi (*n.*)
———-, Mayor and Bailiffs of, 28
———-, Mayor's rolls, 28
———-, Seal of the Mayor and Clerk of, 28
———-, Sheriff's rolls, 28
Long, Emma, 169, 170
——, Thomas, 169, 170
Lyminge, William of, 146

Machun (Mason), John, 11
Maidstone (Madenstan), 8, 10, 11
Makchayt, John, 11
Malverton, Maud of, 58, 59
————, Nicholas of, 59
————, Thomas of, 58, 59
Mason, Peter the, xii, 9
Maynard, Sir John, xl
Michael, Henry, 60
Morton, William, 7
Mulburn in Hoo, 111
Musket, W., 45
Muswell, Lucy, 148
———, Richard, 148

Natindone, William of, 23
Newgate Gaol, xxvi
———, Gaoler of, xxvi
Newington, 129
Newton, 126
Northamptonshire, Eyre of, xxviii, xxxiv
Northmarsh, 165
Norwood, John of, 75 *et sqq*
Nottingham, Robert of, 172 (*n.*)
Nottinghamshire, Eyre of, xxvii

Ofheyne, Master Matthew, 60, 61
Ormesby, Philip of, 29 (*n.*)
Oxford, Christina of, 201 (*n.*)
———, Nicholas of, 201 (*n.*)

Page, John, 54
——, Roger, 115
Papesham, Ralph, vicar of, 29 (*n.*)
Passeley, John of, 126, 127
Paul's Cray, 172 (*n.*)
Pedryntone, Richard of, 144
Penchester (Porchester), Stephen of, 98, 100
Pessindenne (Isindene), Philip of, xiii, xiv, 12–15
————- Robert of, xiii, xiv, 12–15
————- William of, xiii, xiv, 144
Pestour, Richard le, 11
Pickel (Pokel), John, 112
Pickle, Nicholas, 105
Pluckley (Plukele), 180 (*n.*)
Plumstead, 164
Potter, Robert, xiii, xiv, 12–15
Preston, 162 (*n.*)
Preynghose, Roger of, xxiii
Puck, Robert, 112
Pulham, Baldwin the goldsmith of, 17

Queen of England, (Isabella), 86, 87

Randolph, John, 32
Rem, Hugh, 38
Reyton, Richard of, xxiii
Ripple *v.* Ripple, xvii
———, Edmund of, xvii, 58, 59
———, Lawrence of, xvii, 58, 59
Rochester, Bishop of, 186, 186 (*n.*)
Rochester, Solomon of, xxi, xxii
Rowdale, Sir Henry Cobham of, 81, 97, 98, 100
Russell, Christina, 146
———, John, 146

St. Augustine's, Canterbury, Abbot of, 216 (*n.*)
St. Edmunds, Henry of, xxii
————, William of, 172 (*n.*)
St. John's, John of, 216
St. Radegunde's, Abbot of, 216
Sale, Robert of, 186
Salopesburie (Shrewsbury), xxiv
Sandwich, John of, 83, 89
Saxingherst, 31
Scoland, Frank, xix, 186
———-, Geoffrey, 186
———-, Richard, 186–99
———-, Roesia, 196
Scott *v.* Beracre, xiv
——, Thomas, 23–26
Seagrave, John of, 88 *et sqq*
Selling, Gildas of, 83
Seneschal, Henry the, 85
Septvans, John de, 83
Sevenoaks, Richard of, 60
Shardelawe, Robert of, 172 (*n.*)
Shirland (Schrilond), Robert of, 169, 170
Shrewsbury, clerk of the bailiff of, xxiii
Sittingbourne, 126
Skelton (Skettone, Ikton), John, 200
Sligh, Eudo of, 23
Smarden (Smerdenne), 180 (*n.*)
Southfleet (Suthflete), William, 11
Spark, John, 44
Spurrier, Edmund the, gaoler of Newgate, xxvi
Stafford, xxii
Staple (Steper), Thomas of, 206
Staplegate, John of, 60, 61
Statenborough (Skathbury, Statebury), 86, 121, 171, 173 (*n.*)

Steper (Staple), Thomas of, 206
Stetton, Walter of, 112
Stodmarsh, 162 (*n.*)
Stoke, Roger of, 96
Stratford, Abbot of, xxvii
Sturry, 100
———, Robert of, 212 (*and n.*)
Stürzinger, Jacob, xliii, xliv, xlviii, xlix
Surbiton, Henry of, 105
——— *v.* Pickle, xviii
Surrey, county of, summons *sicut alias* in, 204
Sutton, Robert of, 112
Swinefeld, Richard of, Bishop of Hereford, 201 (*n.*)
Swinefield, manor of, 88

Tattershall (Teteshale), John, of, xxvii
Tempesford, xxvii
Tolong, William, 60
Twytham, Alan of, 29 (*n.*)

Uffington, John of, 136 (*n.*)

Valoignes, Warresius of, 83
Villain, Roger the, xxiii

Walewayn, Richard, 38
Walker, Emma, 146
———, Thomas, 146
Warden, Abbot of, 102, 141
Warr, Agnes, xxvi (*n.*)
Waterinesham, 12
Waterlock, Alice, 103
———, Simon, 103
Wellington (Wylmintone), John of, 78, 149–59
———, Maud of, 78, 149–59
Wengham, 162 (*n.*)
Wentham (Wayham), 30 (*n.*)
Whytberd, William, 163
Winchelsey, Robert, Archbishop of Canterbury, 185
Wittley, Henry, 60
Wright, Thomas (antiquary), xliii, xliv, xlviii, xlix

Wrotham, Alice of, 207, 208, 211 (*n.*)
———, Geoffrey of, 207 208, 211 (*n.*)
———, Thomas of, 63 *et sqq.* 207, 211 (*n.*)
Wuldham, Thomas of, Bishop of Rochester, 187, 187 (*n.*)
Wyard (Waynard), John, 164, 166
———, R., 170
Wyberd, Adam, 82
———, Henry, 82
———, Simon, 82
———, Stephen, 82
———, Thomas, 82
——— and Gilbert *v.* Bath, xviii
Wye, franchise of, 171
Wythtricheshamme (Waterinesham), 14
Wyveleshergh, Edith of, 126
———, William of, 126

York, Friar Roger, canon of, 42, 49

Selden Society.

FOUNDED 1887.

To Encourage the Study and Advance the Knowledge of the History of English Law.

Patron:

HIS MAJESTY THE KING.

President:

Mr. Walter Charles Renshaw, K.C.

Vice-Presidents:

The Hon. Mr. Justice Joyce.
Sir Charles Chadwyck Healey, K.C.B., K.C.

Council:

Mr. Sidney O. Addy.
Mr. W. Paley Baildon, F.S.A.
The Right Hon. Sir Herbert H. Cozens-Hardy, M.R.
Dr. Edwin Freshfield.
Mr. Boydell Houghton.
Professor Courtney S. Kenny.
Sir H. C. Maxwell Lyte, K.C.B.
The Right Hon. Lord Justice Fletcher Moulton.
Mr. R. F. Norton, K.C.
Mr. Thomas Rawle.
The Right Hon. Sir Robert Romer, G.C.B.
Mr. C. A. Russell, K.C.
The Hon. Mr. Justice Warrington.
Mr. T. Cyprian Williams.
Mr. James G. Wood.

Literary Directors:

Sir Frederick Pollock, Bart. (13 Old Square, Lincoln's Inn).
Professor Vinogradoff (Court Place, Iffley, Oxford).

Honorary Auditors:

Mr. J. W. Clark, K.C.
Mr. Hubert Hall.

Honorary Secretary:

Mr. B. Fossett Lock (11 New Square, Lincoln's Inn, London).

Honorary Treasurer:

Mr. J. E. W. Rider (8 New Square, Lincoln's Inn, London).

Annual Subscription . . . ONE GUINEA.*

Persons becoming Members may subscribe for any of the preceding years of the Society's existence, and in that case will be entitled to a copy of the publications issued for each year for which they may subscribe.

They may also obtain a complete set of the past publications at a reduced price.

Non-members can obtain the Society's publications from Mr. B. Quaritch, 11 Grafton Street, New Bond Street, W.

* In America, $5.^{15}$

PUBLICATIONS.

The Volumes already published are:

Vol. I., for 1887. SELECT PLEAS OF THE CROWN. Vol. I., A.D. 1200–1225. Edited, from the Rolls preserved in the Public Record Office, by F. W. MAITLAND, Downing Professor of the Laws of England, Cambridge. With Facsimile. Crown 4to. Price to non-members, 28*s*.

A selection from the earliest records of English criminal justice. These criminal cases throw much light on the manners and customs of the people ; they illustrate the working of the ordeals of fire and water, and show how a substitute was gradually found in trial by jury. They are mostly cases of felony, but care has been taken to collect whatever throws light on the procedure of the Local Courts, the system of frankpledge, the organisation of counties and boroughs for judicial purposes, &c., &c.

Vol. II., for 1888. SELECT PLEAS IN MANORIAL AND OTHER SEIGNORIAL COURTS. Vol. I., Henry III. and Edward I. Edited, from the earliest Rolls extant, by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28*s*.

A selection from the oldest manorial records. These embrace the whole legal life and much of the social life of a mediæval village ; including land held on villain tenure, services, rights of common, personal actions for debt and trespass, leet and criminal jurisdiction, misdemeanours, the system of local police and frankpledge, trading communities, and the law merchant as administered at a great fair. The selections are from the rolls of the manors of the Abbey of Bec in 13 counties, of the honour of the Abbot of Ramsay in seven counties, his fair of S. Ives, and his manors in Huntingdon, and of other manors in Berks and Wilts.

Vol. III., for 1889. SELECT CIVIL PLEAS. Vol. I., A.D. 1200–1203. Edited, from the Plea Rolls preserved in the Public Record Office, by W. PALEY BAILDON, F.S.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

A selection from the earliest records of civil litigation. These consist largely of actions relating to land, either directly, as in the various assizes, writs of right and of entry, actions for dower, &c. ; or indirectly, as for feudal services, tolls, franchises, rivers, &c. Others do not concern land. The extracts illustrate the gradual evolution of the different forms of action, both real and personal.

Vol. IV., for 1890. THE COURT BARON : PRECEDENTS OF PLEADING IN MANORIAL AND OTHER LOCAL COURTS. Edited, from MSS. of the 14th and 15th Centuries, by Professor F. W. MAITLAND and W. PALEY BAILDON. Crown 4to. Price to non-members, 28*s*.

This volume contains four treatises on the business of Manorial and other Local Courts, with precedents ; and throws light on the procedure

and pleading. To these are added some very interesting extracts from the rolls of the Court of the Bishop of Ely at Littleport in the Fens (principally during the reign of Edward II.).

Vol. V., for 1891. THE LEET JURISDICTION IN THE CITY OF NORWICH. Edited, from the Leet Rolls of the 13th and 14th Centuries in the possession of the Corporation, by the Rev. W. HUDSON, M.A. With Map and Facsimile. Crown 4to. Price to non-members, 28*s*.

This volume deals with mediæval municipal life; the municipal development of a chartered borough with leet jurisdiction, the early working of the frankpledge system; and generally with the judicial, commerical, and social arrangements of one of the largest cities of the kingdom at the close of the 13th century.

Vol. VI., for 1892. SELECT PLEAS OF THE COURT OF ADMIRALTY. Vol. I., A.D. 1390–1404 and A.D. 1527–1545. Edited by REGINALD G. MARSDEN, of the Inner Temple, Barrister-at-Law. With Facsimile of the ancient Seal of the Court of Admiralty. Crown 4to. Price to non-members, 28*s*.

The business of the High Court of Admiralty was very considerable during the reigns of Henry VIII., of Elizabeth, and of the Stuarts, and played an important part in the development of commercial law. There is in the Records much curious information upon trade, navigation, and shipping, and the claims of the King of England to a lordship over the surrounding seas.

Vol. VII., for 1893. THE MIRROR OF JUSTICES. Edited, from the unique MS. at Corpus Christi College, Cambridge, with a new translation, by W. J. WHITTAKER, M.A. of Trinity College, Cambridge, and Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28*s*.

The old editions of this curious work of the 13th century are corrupt, and in many place unintelligible.

Vol. VIII., for 1894. SELECT PASSAGES FROM BRACTON AND AZO. Edited by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28*s*.

This volume contains those portions of Bracton's work in which he follows Azo, printed in parallel columns with Azo's text. The use made by Bracton of the works of Bernard of Pavia and the canonist Tancred is also illustrated.

Vol. IX., for 1895. SELECT CASES FROM THE CORONERS' ROLLS, A.D. 1265–1413. Edited, from the Rolls preserved in the Public Record Office, by CHARLES GROSS, Ph.D., Professor of History Harvard University. Crown 4to. Price to non-members, 28*s*.

The functions of the coroner were more important in this period than in modern times. The volume supplies interesting information on the history of the office of coroner, on the early development of the jury, on the jurisdiction of the Hundred and County Courts, on the collective responsibilities of neighbouring townships, on proof of Englishry, and on the first beginnings of elective representation.

Vol. X., for 1896. SELECT CASES IN CHANCERY, A.D. 1364–1471. Edited, from the Rolls preserved in the Public Record Office, by W. PALEY BAILDON, F.S.A. Crown 4to. Price to non-members, 28*s*.

These valuable records, of which few have hitherto been printed, throw new light on the connexion of the Chancery with the Council, and the gradual separation of the two ; on the early jurisdiction of the Chancery, its forms and procedure, and on the development of the principles of Equity.

Vol. XI., for 1897. SELECT PLEAS OF THE COURT OF ADMIRALTY. Vol. II., A.D. 1547–1602. Edited by REGINALD G. MARSDEN, of the Inner Temple, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

This volume is in continuation of Vol. VI., and covers the reigns of Edward VI., Mary, and Elizabeth : the period of the greatest importance of the Admiralty Court, and of its most distinguished judges, Dr. David Lewes and Sir Julius Cæsar. It illustrates the foreign policy of Elizabeth, the Armada, and other matters and documents of general historical interest. The Introduction treats of the Court from the 14th to the 18th century, with references to some State Papers not hitherto printed or calendared.

Vol. XII., for 1898. SELECT CASES IN THE COURT OF REQUESTS, A.D. 1497–1569. Edited, from the Rolls preserved in the Public Record Office, by I. S. LEADAM, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

The origin and history of this Court have not hitherto been fully investigated. Established by Henry VII. under the Lord Privy Seal, as a Court of Poor Men's Causes, and developed by Cardinal Wolsey, its valuable records illustrate forcibly the struggle between the Council and the Common Law Courts ; the development of equity procedure and principle outside the Chancery ; the social effect of the dissolution of the monasteries and the raising of rents ; the tenure of land ; the rights of copyholders ; the power of guilds ; and many other matters of legal and social interest. The Introduction covers the whole history of the Court to its gradual extinction under the Commonwealth and Restoration.

Vol. XIII., for 1899. SELECT PLEAS OF THE FORESTS. Edited from the Forest Eyre Rolls and other MSS. in the Public Record Office and British Museum, by G. J. Turner, M.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

The Forest Plea Rolls are very interesting and little known. They begin as early as the reign of King John, and consist of perambulations, claims, presentments and other proceedings (such as trials for poaching and trespass in the Forests) before the Justices in Eyre of the Forests. The present volume deals with the administration of the Forests in the 13th century, their judges, officers, courts, procedure, &c. ; the beasts of the forest, chase, and warren ; the hounds and instruments of hunting ; the grievances of the inhabitants, benefit of clergy, and other important matters.

Vol. XIV., for 1900. BEVERLEY TOWN DOCUMENTS. Edited by ARTHUR F. LEACH, Barrister-at-Law, Assistant Charity Commissioner. Crown 4to. Price to non-members, 28*s*.

These records illustrate the development of Municipal Government

in the 14th and 15th centuries ; the communal ownership of land ; the relations between the town and the trade guilds ; and other interesting matters.

Vol. XV., for 1901. SELECT PLEAS, STARRS, &c., OF THE JEWISH EXCHEQUER, A.D. 1218–1286. Edited, from the Rolls in the Public Record Office, by J. M. RIGG, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

The Justiciarii Judæorum, who had the status of Barons of the Exchequer, exercised jurisdiction in all affairs between Jews or the Jewish community on the one hand and the Crown or Christians on the other ; namely, in accounts of the revenue, in some criminal matters, in pleas upon contracts and torts between Jews and Christians, and in causes or questions touching their land or goods, or their tallages, fines, and forfeitures. This involved a complete registry of deeds or 'starrs.' The Rolls constitute a striking history of the English Jewry for 70 years before their expulsion under Edward I.

Vol. XVI., for 1902. SELECT PLEAS OF THE COURT OF STAR CHAMBER. Vol. I. Edited, from the Records in the Public Record Office, by I. S. LEADAM, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

This volume contains a selection from the earliest records of the famous Star Chamber. The hitherto debated origin of that tribunal and its relation to the King's Council are fully discussed in the Introduction. In addition to matters of great importance to students of constitutional history, there is also a large mass of materials illustrative of the social and economic condition of England during the reign of Henry VII., the prevalent turbulence, the state of the towns and of the monasteries, and the like.

Vol. XVII., for 1903. YEAR BOOKS SERIES. Vol. I. YEAR BOOKS of 1 and 2 EDWARD II. (A.D. 1307–8 and 1308–9). Edited, from sundry MSS., by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28*s*.

An attempt is made to establish by the help of nine manuscripts an intelligible text of these very early law reports, hitherto known only from a very faulty copy of one faulty manuscript. The text is accompanied by a translation and head-notes. Whenever possible, the report of a case has been compared with the corresponding record on the Rolls of the Court of Common Pleas. This volume contains a considerable number of reports never yet published. In the Introduction the Editor discusses the origin of law reports, and supplies an analysis of the Anglo-French language in which the earliest reports were written. This volume is the first of a Year Books Series which the Society hopes to continue in alternate years.

Vol. XVIII., for 1904. BOROUGH CUSTOMS. Vol. I. Edited, from sundry MSS., by Miss MARY BATESON, Fellow of Newnham College, Cambridge. Crown 4to. Price to non-members, 28*s*.

This work takes the form of a Digest, arranged according to subject-matter, of materials collected from a large number of Boroughs in England, Ireland, and Scotland. It provides an inductive and comparative analysis of the local customary law of the boroughs and ports of Great Britain and Ireland, extending over the whole of the Middle Ages. No systematic

attempt of this sort has previously been made in England. A large part of the work is derived from hitherto unpublished sources, and of the residue a great deal has been obtained from books that are not generally accessible or treat only of the affairs of some one town. The first volume deals exhaustively with crime, tort, and procedure. The Introduction discusses the growth of customary law in the boroughs, and contains a bibliography of custumals already published.

Vol. XIX., for 1904. YEAR BOOKS SERIES. Vol. II. YEAR BOOKS of 2 and 3 EDWARD II. (A.D. 1308–9 and 1309–10). Edited, from sundry MSS., by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28*s*.

This continues the work of Vol. I. The mass of unpublished material discovered continues to increase, and gives to these volumes an interest even beyond what was contemplated at their first inception. In many instances the publication of two or even three reports of the same case, together with a full note of the pleadings recorded on the roll of the Court, will enable the reader to comprehend in a manner that has hitherto been impossible the exact nature of the points of law discussed and decided.

Vol. XX., for 1905. YEAR BOOKS SERIES. Vol. III. YEAR BOOKS of EDWARD II. (A.D. 1309–10). Edited, from sundry MSS., by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28*s*.

This is a continuation of Vols. I. and II. of this Series. It contains an interesting dissertation on the existing manuscripts of these Year Books : a comparison of the reports of the same cases in different manuscripts, and a discussion of their history, paternity, and reliability, with other interesting matters relating to the Year Books and the reported cases.

Vol. XXI., for 1906. BOROUGH CUSTOMS. Vol. II. Edited, from sundry MSS., by Miss MARY BATESON, Fellow of Newnham College, Cambridge. Crown 4to. Price to non-members, 28*s*.

This volume completes the masterly digest of the Borough Customs begun in Vol. XVIII. by the same Editor. The Introduction contains an analysis of the primitive laws embodied in the Local Custumals, traces their sources both in procedure and substantive law, and compares them with the development of the Common Law. The second volume deals with contract, succession, land, alienation and devise of land, husband and wife, infants, dower, the Borough Courts and their officers, process and execution, and many other subjects.

Vol. XXII., for 1907. YEAR BOOKS SERIES. Vol. IV. YEAR BOOKS of EDWARD II. (A.D. 1310). Edited, from sundry MSS., by the late Professor F. W. MAITLAND and G. J. TURNER, M.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

This is a continuation of Vol. III., and concludes the reports for the year 1310. The text and translation were left nearly complete and once revised by Professor Maitland at his death. Mr. Turner has added a considerable number of additional notes from the records, most of which are collected in an Appendix, while some are embodied in the later portions of the text. He has also written an Introduction on the Courts and Judges of the period, with comments on some of the important cases reported in the volume.

Vol. XXIII., for 1908. SELECT CASES CONCERNING THE LAW MERCHANT. Vol. I. Local Courts. Edited, from sundry MSS., by Professor Charles Gross, Ph.D., Professor of History, Harvard University. Crown 4to. Price to non-members, 28*s*.

This volume illustrates the administration of the Law Merchant from the 13th century onwards in the Local Courts established for the execution of speedy justice between merchants, such as Fair Courts, Borough Courts, Staple Courts. The records of these Courts have proved to be very plentiful and enlightening. As no such mediæval records are known to exist on the Continent, the English documents are very important, and no attempt has hitherto been made to digest and compare them. The Fair Court of St. Ives has been chosen as the principal type; but the records of other Courts at Carnarvon, Bristol, Leicester, Norwich, Exeter, the Cinque Ports and elsewhere have also been utilised. The Introduction deals with the history of all such Courts and of their records, and contains interesting appendices. Another volume will deal with the Law Merchant in the King's Courts at Westminster, and with the history of the subject generally.

Vol. XXIV., for 1909. YEAR BOOK SERIES. Vol. V. The Eyre of Kent of 6 and 7 Edward II. (A.D. 1313–4). Vol. I. Edited, from sundry MSS., by the late Professor Maitland, the late Mr. L. W. Vernon Harcourt, of Gray's Inn, Barrister-at-Law, and Mr. W. C. Bolland, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

This is the first complete report in detail of the work of the Itinerant Justices commissioned to 'hold all pleas' touching the county visited on the Eyre. The text has been laboriously compiled from the collation of 18 MSS., mostly independent and all more or less corrupt. The present volume contains an account of the Commissions, the Articles of the Eyre, the preliminary proceedings, the Pleas of the Crown, and some actions of attaint and trespass. It throws new light on the whole procedure, and in particular on the financial purposes of the Eyre and the growth of the Jury System. The Introduction treats of all these matters and also incidentally of other interesting subjects, such as the history of coroners, abjuration of the realm, privilege of clergy, deodands, a subsidiary Eyre for the liberty of Wye, the trades and callings exercised at the period, the topography of Canterbury, and an interesting philological note on the obscure term 'busones,' &c. An appendix contains the names of all the bailiffs and jurors attending the Eyre.

Vol. XXV., for 1910. Select Pleas of the Court of Star Chamber. Vol. II. Edited, from the Records in the Public Record Office, by I. S. Leadam, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28*s*.

This is a continuation of Vol. XVI., and contains a selection of interesting records during the reign of Henry VIII. These are largely concerned with matters of great historical and economical importance—*e.g.* the State policy of the period in fixing prices for commodities and in controlling or forbidding exports; the relations between the monastic houses and their agricultural tenants or commercial communities; rights of pasture and enclosure of common lands; the conflicting interests of the artisan

and trading classes; the organisation of municipalities, and in particular Newcastle and Bristol; manorial tenures and the position of villeins. All of these matters are further illustrated in a full Introduction, which also deals with the development of (1) the constitution, and (2) the process of the Court of Star Chamber.

Vol. XXVI., for 1911. YEAR BOOKS SERIES. Vol. VI. YEAR BOOKS of EDWARD II. (A.D. 1310–11). Edited, from sundry MSS., by G. J. TURNER. [In the Press.]

Vol. XXVII., for 1912. YEAR BOOKS SERIES. Vol. VII. THE EYRE OF KENT of 6 and 7 EDWARD II. (A.D. 1313–4). Vol. II. Edited, from sundry MSS., by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-law, the late F. W. MAITLAND, and the late L. W. VERNON HARCOURT. With facsimile of a specimen of MS. Crown 4to. Price to non-members 28*s*.

This is a continuation of Vol. XXIV., comprising the civil pleas arranged in alphabetical order from Account to Mesne. The Introduction discusses many of these cases. It also treats of a remarkable procedure by Bills in Eyre, not hitherto observed, adapted to the prompt disposal of the suits of poor persons; makes a further contribution to the vexed question of the authorship of the Year Books, criticising Mr. Pike's theory; and concludes with a reprint, translation, and criticism of a 14th-century treatise on Mediæval French orthography found in Lincoln's Inn Library. A frontispiece reproduces in collotype a facsimile of a portion of one MS. of this Year Book, containing a specially obscure passage, by way of illustration of the materials used.

The Volumes in course of preparation are:

Vol. XXVI., for 1911. YEAR BOOKS SERIES. Vol. VI. YEAR BOOKS of EDWARD II. By G. J. TURNER. [See above.]

Vol. XXVIII., for 1912. SELECT CHARTERS OF TRADING COMPANIES. By C. T. CARR.

Vol. . YEAR BOOKS SERIES. Vol. . YEAR BOOK OF THE EYRE OF KENT of 6 and 7 EDWARD II. Vol. III. By W. C. BOLLAND.

Vol. . THE LAW MERCHANT. Vol. II. By Professor MORGAN and the late Professor CHARLES GROSS. This volume will deal with the Law Merchant in the King's Courts.

Vol. . SELECT PLEAS IN ECCLESIASTICAL COURTS. By HAROLD D. HAZELTINE.

Vols. . YEAR BOOKS SERIES. Vols. . FURTHER YEAR BOOKS OF EDWARD II. By G. J. TURNER and Professor GELDART. Also by Professor VINOGRADOFF.

Vol. . THE 'LIBER PAUPERUM' OF VACARIUS. By F. DE ZULUETA, Fellow of New College, Oxford.

The Council will be grateful for any information upon the contents and custody of any MSS. which may be of sufficient interest to be dealt with by the Society.

All communications may be addressed to the Honorary Secretary,

Mr. B. FOSSETT LOCK,

11 New Square, Lincoln's Inn, London, W.C.

Subscriptions should be paid, and Applications for Forms of Membership or Bankers' Orders and communications as to the issue of the publications should be made to the Honorary Treasurer,

Mr. J. E. W. RIDER,

8 New Square, Lincoln's Inn, London, W.C.

or, in the United States of America, to the Local Honorary Secretary and Treasurer,

Mr. RICHARD W. HALE,

60 State Street, Boston, Massachusetts.

LIST OF MEMBERS.

1911.

(* *denotes Life Members ;* † *Members of the Council ;* ‡ *Honorary Members.*)

UNITED KINGDOM.

†Addy, Sidney O.	3 Westbourne Road, Sheffield.
Alexander, G. Glover	Keir House, Barnsley, Yorks.
Alsop, J. W.	Ulverscroft, 25 Bidston Road, Birkenhead.
Alverstone, The Right Hon. Lord, C.J.	Hornton Lodge, Pitt St., Kensington, W.
Anson, Sir W. R., Bart.	All Souls' College, Oxford.
†Baildon, W. Paley	5 Stone Buildings, Lincoln's Inn, W.C.
Barry, Wm. F.	10 King's Bench Walk, Temple, E.C.
Bayley, K. C.	The College, Durham.
Beale, J. S.	32 Holland Park, W.
Bird, Ernest E.	5 Gray's Inn Square, W.C.
Bolland, W. C.	5 Essex Court, Temple, E.C.
Bond, Henry	Trinity Hall, Cambridge.
Brown, H. F., LL.B.	Crypt Chambers, Eastgate Row, Chester.
Bruce, The Right Hon. Sir Gainsford	Yewhurst, Bromley, Kent.
Buckley, The Right Hon. Lord Justice	Royal Courts of Justice, W.C.
Burrows, R.	3 Elm Court, Temple, E.C.
Bushe-Fox, L. H. K.	St. John's College, Cambridge.
Campbell, R.	10 New Court, Lincoln's Inn, W.C.
Carpenter, R. H.	Bank Chambers, Corn Street, Bristol.
Carr, Cecil T.	2 Mitre Court Buildings, Temple, E.C.
Carter, A. T.	Christ Church, Oxford.
Chadwick, S. J.	Lyndhurst, Dewsbury.
Channell, The Hon. Mr. Justice	Royal Courts of Justice, W.C.
Charles, The Right Hon. Sir A.	Woodlands, Sevenoaks, Kent.
Clark, J. W., K.C.	Board of Agriculture and Fisheries, St. James's Square, S.W.
Cohen, The Right Hon. A., K.C.	26 Great Cumberland Place, W.
Collens, W. J.	2 Gresham Buildings, Guildhall, E.C.
Collins, The Right Hon. Lord	3 Bramham Gardens, S.W.
*Connaught, H.R.H. The Duke of	Clarence House, St. James's, S.W.
Cook, C. A.	Sullingstead, Hascombe, Godalming.
Coolidge, Rev. W. A. B.	c/o Parker & Son, 27 Broad St., Oxford.
†Cozens-Hardy, The Right Hon. Sir H. H., M.R.	Royal Courts of Justice, W.C.
Cracroft, R. W.	8 King's Bench Walk, Temple, E.C.
Cross, W. C. H.	Bank Chambers, Corn Street, Bristol.
Curtis, T. S.	4 Bedford Row, W.C.

Danckwerts, W. O., K.C.	7 New Court, Carey Street, W.C.
Darling, The Hon. Mr. Justice	18 Prince's Gardens, S.W.
De Gruchy, W. L.	12 Highbury Mansions, N.
Donnithorne, Nicholas	Fareham, Hants.
Du Cane, Louis	46 Parliament Street, S.W.
Duignan, W. H.	Gorway, Walsall.
Ellett, Robert	Cirencester.
Elphinstone, Sir Howard W., Bart.	2 Stone Buildings, Lincoln's Inn, W.C.
Estill, John	Malton, Yorks.
Farwell, The Right Hon. Lord Justice	15 Southwell Gardens, S.W.
Finlay, The Right Hon. Sir R. B., G.C.M.G.	4 Temple Gardens, Temple, E.C.
Fisher, H. A. L.	New College, Oxford.
Fisk, Ernest	26 Museum Street, Ipswich.
Fladgate, W. F.	2 Craigs Court, S.W.
Ford, J. Rawlinson	Yealand Conyers, Carnforth.
Foster, Canon C. W.	Timberland Vicarage, Lincoln.
†Freshfield, Dr. Edwin	New Bank Buildings, 31 Old Jewry, E.C.
Fry, The Right Hon. Sir E.	Failand House, Failand, near Bristol.
Geldart, W. M.	27 Beaumont Street, Oxford.
*Giffard, Sir Henry A., K.C.	Braye du Valle, Guernsey.
Gillett, W. E.	5 Berners Street, W.
Gladstone, Robert, Jun.	Woolton Vale, Liverpool.
Goodger, C. W. S.	27 Grey Street, Newcastle-on-Tyne.
Gore, John F.	46 Egerton Gardens, S.W.
Grantham, The Hon. Mr. Justice	Royal Courts of Justice, W.C.
Gray, W. H.	Ormond House, 63 Queen Victoria St., E.C.
Greenwood, R. H.	Bankfield, Kendal.
Gregory, P. S.	1 New Square, Lincoln's Inn, W.C.
Hall, Hubert	Public Record Office, Chancery Lane, W.C.
Halliday, J.	Chicklade House, near Salisbury.
Harris, Charles B.	Sittingbourne, Kent.
Harris, D. L.	Downing College, Cambridge.
Hazeltine, Harold D.	Emmanuel College, Cambridge.
†Healey, Sir C. Chadwyck, K.C.B., K.C.	Wyphurst, Cranleigh, Surrey.
Henlé, F. T. H.	3 Hare Court, Temple, E.C.
Hill, A. Norman	Leighton House, Neston, Cheshire.
Hill, Sir John Gray	10 Water Street, Liverpool.
Hind, J.	Edwalton, Nottingham.
Houghton, Boydell	1 Temple Gardens, E.C.
Hudson, Rev. W.	65 Ashley Gardens, Westminster, S.W.
Humfrys, W. J.	Hereford.
Hurst, Gilbert H. J.	4 Stone Buildings, Lincoln's Inn, W.C.
Hutchinson, Sir J. T.	Lorton Hall, Cumberland.
Ingle, W. Brouncker	4 Orchard Road, Blackheath, S.E.
Ingledew, A. M.	4 Mount Stuart Square, Cardiff.

Jacobs, Herbert	1 Harcourt Buildings, Temple, E.C.
Jelf, Sir A. R.	Oak House, Putney, S.W.
Jessel, A. H., K.C.	5 New Square, Lincoln's Inn, W.C.
Johnson, Sir Henry James	101 Leadenhall Street, E.C.
†Joyce, The Hon. Mr. Justice	Royal Courts of Justice, W.C.
Kennedy, The Rt. Hon. Lord Justice	23 Phillimore Gardens, W.
†Kenny, Prof. Courtney	Downing College, Cambridge.
King, H. C.	17 Serjeants' Inn, Fleet Street, E.C.
King, W. G.	12 Essex Street, Strand, W.C.
Kneale, Llewellyn S.	Woodbourne Place, Douglas, Isle of Man.
Lawrence, P. O., K.C.	6 New Court, Lincoln's Inn, W.C.
Leadam, I. S.	4 Elm Court, Temple, E.C.
Lewis, Frank B.	11 Old Jewry Chambers, E.C.
Lindley, The Right Hon. Lord	East Carleton, Norwich.
Lindsay, W. A., K.C.	College of Arms, Queen Victoria St., E.C.
Lister, J.	Shelden Hall, near Halifax.
†Lock, B. Fossett	11 New Square, Lincoln's Inn, W.C.
Lushington, Vernon, K.C.	36 Kensington Square, W.
†Lyte, Sir H. C. Maxwell, K.C.B.	Public Record Office, Chancery Lane,W.C.
Mackenzie, W.	9 King's Bench Walk, Temple, E.C.
Macnaghten, The Right Hon. Lord	198 Queen's Gate, S.W.
Marsden, R. G.	13 Leinster Gardens, W.
Martelli, E. W., K.C.	4 New Square, Lincoln's Inn, W.C.
Matthews, J. B.	2 Paper Buildings, Temple, E.C.
Mears, T. L., LL.D.	9 King's Bench Walk, Temple, E.C.
Mitchell, W.	Christ's College, Cambridge.
Moore, H. Stuart	6 King's Bench Walk, Temple, E.C.
Morgan, Prof. J. H.	1 Mitre Court Buildings, Temple, E.C.
Moss, W.	Eldon Chambs.,Wheeler Gate,Nottingham.
†Moulton, The Rt. Hon. Lord Justice Fletcher	57 Onslow Square, S.W.
Nash, E.	37 Sussex Gardens, Hyde Park, W.
Neilson, G., LL.D.	Wellfield, Partickhill, Glasgow.
†*Norton, R. F., K.C.	11 Old Square, Lincoln's Inn, W.C.
Nuttall, T. K.	8 Harrington Street, Liverpool.
O'Connor, His Honour Judge, K.C.	Dunsdale, Poole Road, Bournemouth.
Parker, G. Phillips	3 Ormonde Terrace, Regent's Park, N.W.
Parker, The Hon. Mr. Justice	Royal Courts of Justice, W.C.
Perks, Walter	Claridge House, Sevenoaks.
Peter, Thurstan C.	Redruth, Cornwall.
Pettitt, D. H.	27 Chancery Lane, W.C.
Pickering, J. E. L. (Librarian)	Inner Temple Library, E.C.
Pike, L. Owen	10 Chester Terrace, Regent's Park, N.W.
Poland, Sir Harry, K.C.	28 Sloane Gardens, S.W.
†Pollock, Right Hon. Sir F., Bart.	13 Old Square, Lincoln's Inn, W.C.
Poore, Major R.	Old Lodge, Salisbury.

Priest, F. J.	35 South John Street, Liverpool.
Prothero, G. W.	24 Bedford Square, W.C.
Quaritch, B.	11 Grafton Street, New Bond St., W.
Radford, G. H., M.P.	27 Chancery Lane, W.C.
Rankin, G. C.	2 Mitre Court Buildings, Temple, E.C.
†Rawle, Thomas	1 Bedford Row, W.C.
Reid, The Hon. Whitelaw	Dorchester House, W.
†Renshaw, Walter C., K.C.	Sandrocks, Hayward's Heath, Sussex.
†Rider, J. E. W.	8 New Square, Lincoln's Inn, W.C.
Ridley, The Hon. Mr. Justice	48 Lennox Gardens, S.W.
Rigg, J. M.	79 Brixton Hill, S.W.
Ritson, Vernon	14 Norfolk Street, Sunderland.
Robinson, Gleeson E.	170 Strand, W.C.
†Romer, The Right Hon. Sir Robert	21 Queen's Gate Gardens, S.W.
†Russell, C. A., K.C.	2 Harcourt Buildings, Temple, E.C.
Salter, Rev. H. E.	The Manor House, Dry Sandford, Abingdon.
Samson, C. L.	89 Gresham Street, E.C.
Savill, Harry	12 Fenchurch Avenue, E.C.
Scargill-Bird, S. R.	Public Record Office,Chancery Lane, W.C.
Seebohm, F.	The Hermitage, Hitchin.
Shadwell, C. L.	c/o Messrs. James Parker, Oxford.
Sharp, J. E. E. S.	Public Record Office, Chancery Lane,W.C.
Shawcross, James	Wellington, Salop.
Smith, Vernon R., K.C.	3 New Square, Lincoln's Inn, W.C.
Solomon, Robert B.	56 Priory Road, Kilburn, N.W.
Stephen, A. L.	29 Fitzroy Square, W.
Stephens, H. C.	Avenue House, Finchley, N.
Stevens, F. Bentham	26 Marlborough Place, Brighton.
Stirling, The Right Hon. Sir James	Finchcocks, Goudhurst, Kent.
Sweet, Charles	10 Old Square, Lincoln's Inn, W.C.
Taylor, R. S.	4 Field Court, Gray's Inn, W.C.
Thirlby, Edwin Harris	3 Mitre Court, Temple, E.C.
Trower, W.	5 New Square, Lincoln's Inn, W.C.
Tucker, John	Elm Lodge, Old London Road, Hastings.
Turner, G. J.	5 Clement's Inn, Strand, W.C.
Turton, R. B.	Kildale Hall, Grosmont, Yorks.
†Vinogradoff, Professor	Court Place, Iffley, Oxford.
*Walker, J. Douglas, K.C.	20 Queen's Gate Gardens, S.W.
Wallis, J. P.	Royal Courts of Justice, Madras.
Walters, W. Melmoth	Ewell, Surrey.
†Warrington, The Hon. Mr. Justice	Royal Courts of Justice, W.C.
Watson, E. J.	12 John Street, Bristol.
*Welby, Edward M. E.	Norton House, Norton, Sheffield.
Westlake, J., K.C.	River House, Chelsea Embankment, S.W.
Wheatley, R. A.	The Shire Hall, Haverfordwest, Pem.

Wheeler, G. G. G.	St. Ives, Hunts.
White, J. Bell	Alderbourne Manor, Gerrards Cross, Bucks.
Whittuck, E. A.	Claverton Manor, Bath.
Wightman, A.	14 George Street, Sheffield.
Williams, J. Fischer	7 New Square, Lincoln's Inn, W.C.
Williams, Romer	Norfolk House, Norfolk St., Strand, W.C.
†Williams, T. Cyprian	7 Stone Buildings, Lincoln's Inn, W.C.
Williams, T. W.	Bank Chambers, Corn Street, Bristol.
Williams, The Rt. Hon. Lord Justice	Royal Courts of Justice, W.C.
Wills, The Right Hon. Sir Alfred	Saxholm, Basset, Southampton.
†Wood, James G.	7 New Square, Lincoln's Inn, W.C.
Woods, J. C.	Hillside, Swansea.
Woods, M. S. Grosvenor, K.C.	Mountfield, Bonchurch, I.W.
Younger, Robert, K.C.	16 Old Square, Lincoln's Inn, W.C.

SOCIETIES, LIBRARIES, &c.

Birmingham:	
Birmingham Free Libraries	Ratcliff Place.
Birmingham Law Society	Wellington Passage, Bennetts Hill.
Cambridge:	
Downing College	
Newnham College	
*Squire Law Library	
Trinity College	
Trinity Hall	
Croydon:	
Public Libraries	
Dublin:	
King's Inns' Library	
National Library of Ireland	c/o Hodges, Figgis & Co., 104 Grafton St.
Edinburgh:	
Society of Solicitors in the Supreme Courts of Scotland	S.S.C. Library, 20 Hill Street.
The Signet Library	
University Library	c/o J. Thin, Esq., 54 & 55 South Bridge.
Glasgow:	
Faculty of Procurators	205 St. Vincent Street.
Mitchell Library	21 Miller Street.
University Library	c/o Messrs. MacLehose & Sons, 61 St. Vincent Street.
Hull:	
Public Libraries	Albion Street.
Leeds:	
Public Library	Municipal Buildings.
The Leeds Library	Commercial Street.

LIVERPOOL	
FREE PUBLIC LIBRARIES	William Brown Street.
INCORPORATED LAW SOCIETY	10 Cook Street.
UNIVERSITY LIBRARY	
LONDON :	
BAR LIBRARY	Royal Courts of Justice, W.C.
BISHOPSGATE INSTITUTE	Bishopsgate, E.C.
GLADSTONE LIBRARY	National Lib. Club, Whitehall Place, S.W.
GRAY'S INN	
GUILDHALL LIBRARY	Guildhall, E.C.
HOLBORN PUBLIC LIBRARY	High Holborn, W.C.
HOUSE OF COMMONS LIBRARY	c/o Wyman & Son, Ltd., Fetter Lane, E.C.
HOUSE OF LORDS LIBRARY	c/o Wyman & Son, Ltd., Fetter Lane, E.C.
INNER TEMPLE	
LINCOLN'S INN	
LONDON LIBRARY	14 St. James's Square, S.W.
MIDDLE TEMPLE	
OXFORD AND CAMBRIDGE CLUB	c/o Harrison & Sons, 59 Pall Mall, S.W.
PUBLIC RECORD OFFICE	c/o Wyman & Son, Ltd., Fetter Lane, E.C.
REFORM CLUB	Pall Mall, S.W.
SCHOOL OF ECONOMICS	Clare Market, W.C.
SION COLLEGE	Victoria Embankment, E.C.
SOCIETY OF ANTIQUARIES	Burlington House, W.
THE LAW SOCIETY	Chancery Lane, W.C.
UNIVERSITY COLLEGE	c/o H. K. Lewis, 136 Gower Street, W.C.
UNIVERSITY OF LONDON	South Kensington, S.W.
MANCHESTER :	
FREE REFERENCE LIBRARY	2 King Street.
JOHN RYLANDS LIBRARY	
MANCHESTER LAW LIBRARY	Kennedy Street.
VICTORIA UNIVERSITY	c/o J. E. Cornish,Ltd.,16 St. Ann's Square.
NEWCASTLE-ON-TYNE :	
LITERARY AND PHILOSOPHICAL SOCIETY	
NOTTINGHAM :	
THE NOTTINGHAM INCORPORATED LAW SOCIETY	South Parade.
OXFORD :	
ALL SOULS' COLLEGE	
MAITLAND LIBRARY	All Souls' College.
MERTON COLLEGE	
*ST. JOHN'S COLLEGE	
TRINITY COLLEGE	c/o Parker & Son, 27 Broad St., Oxford.
READING :	
PUBLIC LIBRARY	
WINDSOR :	
ROYAL LIBRARY	Windsor Castle, Berks.

COLONIAL AND FOREIGN.

DENMARK:	
Royal Library, Copenhagen	c/o Dawson & Sons, Ltd., St. Dunstan's House, Fetter Lane, E.C.
DOMINION OF CANADA:	
Carswell Co.	19 Duncan Street, Toronto: c/o T. Meadows & Co., 35 Milk Street, E.C.
Chrysler, F. H., K.C.	34 Central Chambers, Ottawa.
Law Society of Upper Canada	c/o Stevens & Haynes, 13 Bell Yard, W.C.
Library of Parliament, Ottawa	c/o E. G. Allen & Son, 14 Grape Street, Shaftesbury Avenue, W.C.
The Supreme Court, Ottawa	c/o Stevens & Haynes, 13 Bell Yard, W.C.
FRANCE:	
Barclay, Sir Thomas	17 Rue Pasquier, Paris.
Tardiff, E. T.	8 Cité Vaneau, Paris.
Bibliothèque Nationale	Paris } c/o Simpkin, Marshall & Co.,
,, de la Faculté de Droit	Paris } 2 Orange Street, Haymarket, S.W.
,, de l'Université	c/o Picard et Fils, 82 Rue Bonaparte, Paris.
,, de l'Université de Lyon	c/o Henri Georg, Passage de l'Hôtel-Dieu, Lyons.
GERMANY:	
Baer & Co. (Frankfort)	c/o B. Quaritch, 11 Grafton Street, New Bond Street, W.
Hübner, Professor	108 Augusterstrasse, Rostock.
Mayer, Prof. Dr. E.	33 Randersackererstrasse, Wurzburg.
Berlin Royal Library	c/o Asher & Co., 13 Bedford Street, W.C.
K. Hof & Stadts Bibliothek (Munich)	c/o B. Quaritch, 11 Grafton Street, New Bond Street, W.
INDIA:	
Mukhopadhyay, The Hon. Asutosh (Calcutta)	c/o B. Quaritch, 11 Grafton Street, New Bond Street, W.
University of Calcutta	
NEW SOUTH WALES:	
Department of Attorney-General and Justice	c/o Agent-General, 123, 125, Cannon Street, E.C.
NEW ZEALAND:	
Williams, Mr. Justice, J. S.	Supreme Court, Dunedin.
University of Otago	c/o Messrs. Otto Schulze & Co., 20 South Frederick Street, Edinburgh.
Otago Law Society	Dunedin, N.Z.
QUEENSLAND:	
*Griffith, The Right Hon. Sir Samuel	High Court of Australia, Sydney.
Queensland Public Libraries	Brisbane.
SOUTH AUSTRALIA:	
Way, The Right Hon. Sir Samuel	Chief Justices' Chambers, Adelaide.
University of Adelaide	c/o W. Muller, 16 Grape Street, New Oxford Street, W.

SWITZERLAND:	
Universitäts-Bibliothek (Basel)	c/o B. Quaritch, 11 Grafton Street, New Bond Street, W.
VICTORIA:	
Melbourne Public Library	The Agent-General for Victoria, Melbourne House, Strand, W.C.
UNITED STATES OF AMERICA:	
California:	
California University Liby.	c/o Messrs. Richardson & Co., 25 Suffolk Street, S.W.
San Francisco Law Library	Carswell Co., c/o T. Meadows & Co., 35 Milk Street, E.C.
Colorado:	
Hughes, Charles J., Junior	Rooms 4–12, Hughes Block, 16th and Stout Streets, Denver.
District of Columbia:	
Holmes, Hon. O. W.	Supreme Court of the United States, Washington.
Library of Congress	c/o E. G. Allen & Son, 14 Grape Street, Shaftesbury Avenue, W.C.
Connecticut:	
Connecticut State Library	Hartford.
Yale University	c/o E. G. Allen & Son, 14 Grape Street, Shaftesbury Avenue, W.C.
Illinois:	
English, Lee F.	Atchison, Topeka, and Santa Fé Railway Company, Law Department, Chicago.
Newberry Library, Chicago	c/o B. F. Stevens & Brown, 4 Trafalgar Square, W.C.
The Law Institute, Chicago	c/o Stevens & Haynes, 13 Bell Yard, W.C.
Union of Illinois, Urbana	c/o G. E. Stetchert & Co., 2 Star Yard, Carey Street, W.C.
University Library, Chicago	c/o B. F. Stevens & Brown, 4 Trafalgar Square, W.C.
North-Western University School of Law	Chicago.
Iowa:	
Iowa State University Law Library	Iowa City
Iowa State Library	Des Moines.
Maine:	
McIlwain, C. H.	Bowdoin College, Brunswick.
Maryland:	
Waters, J. Seymour T.	528 Equitable Building, Baltimore.
The Baltimore Bar Library	Baltimore.
Johns Hopkins University	Baltimore.

MASSACHUSETTS :	
*ABBOT, E. H.	14 Beacon Street, Boston.
ADAMS, Walter	S. Framingham.
BEALE, Professor J. H.	13 Chauncey Street, Cambridge.
BRANDEIS, Louis D.	161 Devonshire Street, Boston.
FISH, Frederick P.	84 State Street, Boston.
GRAY, Professor J. C.	60 State Street, Boston.
HALE, Richard W.	60 State Street, Boston.
HILL, A. D.	Room 1033, 53 State Street, Boston.
LEVERETT, George V.	53 Devonshire Street, Boston.
NEILSON, N.	Mt. Holyoke College, South Hadley.
PUTNAM, Miss Bertha H.	Mt. Holyoke College, South Hadley.
SCHOFIELD, Wm.	136 Summer Street, Malden.
THAYER, Ezra R.	53 State Street, Boston.
BOSTON UNIVERSITY LAW SCHOOL	Ashburton Place, Boston.
BOSTON PUBLIC LIBRARY	c/o B. Quaritch, 11 Grafton Street, W.
BOSTON ATHENÆUM HARVARD COLLEGE LIBRARY	c/o E. G. Allen & Son, Ltd., 14 Grape Street, Shaftesbury Avenue, W.C.
*HARVARD LAW SCHOOL	Cambridge.
MOUNT HOLYOKE COLLEGE LIBRARY	South Hadley.
SOCIAL LAW LIBRARY	Court House, Boston.
WORCESTER COUNTY LAW LIBRARY	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
MICHIGAN :	
MICHIGAN UNIVERSITY	c/o H. Sotheran & Co., 140 Strand, W.C.
MICHIGAN UNIVERSITY LAW LIBRARY	Ann Arbor.
MINNESOTA :	
YOUNG, Hon. G. B. (Exors. of)	24 Gilfillan Block, St. Paul.
LIBRARY OF UNIVERSITY OF MINNESOTA, MINNEAPOLIS	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
THE MINNEAPOLIS BAR ASSOC.	Temple Court, Minneapolis.
MISSOURI :	
LAWSON, J. D.	Missouri Law School, Columbia.
SALE, M. N.	Court House, St. Louis.
SPENCER, Selden P.	802 Commonwealth Trust Building, 421 Olive Street, St. Louis.
NEBRASKA :	
HASTINGS, W. G.	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
UNIVERSITY OF NEBRASKA	c/o Sotheran & Co., 140 Strand, W.C.
NEW HAMPSHIRE :	
DARTMOUTH COLLEGE, HANOVER	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
NEW JERSEY :	
PRINCETON UNIVERSITY	Princeton.

NEW YORK:

ABBOT, Everett V.	45 Cedar Street, New York City.
ABBOTT, Nathan	Columbia University, New York City.
ASHLEY, Clarence D.	New York University, New York City.
BELL, James D.	91 Rugby Road, Brooklyn.
BRAINERD, Cephas	92 William Street, New York City.
‡CHOATE, The Hon. Joseph H.	New York City.
DAVIES, J. T.	34 Nassau Street, New York City.
FLETCHER, Henry	65 Broadway, New York City.
GRAM, J. P.	Law Department, Mutual Life Insurance Co., 34 Nassau Street, New York City.
GULICK, John C.	132 Nassau Street, New York City.
KENNESON, T. D.	15 William Street, New York City.
LOEWY, Benno	206 Broadway, New York City.
MILBURN, J. G.	c/o B. F. Stevens & Brown, 4 Trafalgar Square, W.C.
VAUGHAN, Athelstan	9 Jackson Avenue, Long Island City.
APPELLATE DIVISION LAW LIBRARY	Carswell Co.: c/o T. Meadows & Co., 35 Milk Street, E.C.
BROOKLYN LAW LIBRARY	c/o Alfred J. Hook, Librarian, County Court House, Brooklyn.
COLUMBIA UNIVERSITY LIBY.	
COLUMBIA UNIVERSITY SCHOOL OF LAW	c/o William C. Adams, Law Librarian, New York City.
CORNELL UNIVERSITY LIBRARY	c/o E. G. Allen & Son, 14 Grape Street, Shaftesbury Avenue, W.C.
NEW YORK BAR ASSOCIATION	c/o S. Sidney Smith, Treasurer, 42 West 44th Street, New York City.
NEW YORK LAW INSTITUTE	c/o Stevens & Haynes, 13 Bell Yard, W.C.
NEW YORK PUBLIC LIBRARY	c/o B. F. Stevens & Brown, 4 Trafalgar Square, W.C.
NEW YORK STATE LIBRARY	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
NEW YORK UNIVERSITY LAW LIBRARY	Waverley Place, New York City.

OHIO:

CINCINNATI LAW LIBRARY ASSOC.	c/o Thornton M. Hinkle, Treasurer, Union Trust Building, Cincinnati.
LAW SCHOOL, CINCINNATI COLL.	Cincinnati.

PENNSYLVANIA:

*GEST, John M.	Judges' Chambers, Orphan Court, Philadelphia.
JONES, James Collins	1531 North 15th Street, Philadelphia.
LINDSEY, E. S., LL.B.	Warren.
SHAFER, Hon. John D.	Court House, Pittsburg.
SIMPSON, Alexander, Jr.	815 Stephen Girard Bldg., Philadelphia.
THOMPSON, A. M.	727 Frick Building, Pittsburg.
BIDDLE LAW LIBRARY	Law Department of the University of Pennsylvania, Philadelphia.

PENNSYLVANIA—*cont.*	
BRYN MAWR COLLEGE LIBRARY	c/o Australian Book Co., 21 Warwick Lane, E.C.
LAW ASSOC. OF PHILADELPHIA	Room 600, City Hall, Philadelphia.
LIBRARY CO. OF PHILADELPHIA	c/o E. G. Allen & Son, 14 Grape Street, Shaftesbury Avenue, W.C.
LIBRARY OF UNIVERSITY OF PENNSYLVANIA	c/o G. E. Stechert & Co., 2 Star Yard, Carey Street, W.C.
VERMONT:	
HASELTON, Seneca	Burlington.
MOULTON, Sherman R.	203 Main Street, Burlington.
WASHINGTON:	
MCDANIELS, J. H.	Ellensburgh, Washington.
SHEPARD, Charles E.	New York Building, Seattle.
WISCONSIN:	
LEHIGH UNIVERSITY	c/o H. Sotheran & Co., 140 Strand, W.C.
STATE HISTORICAL SOCIETY	c/o H. Sotheran & Co., 140 Strand, W.C.

LOCAL SECRETARIES AND CORRESPONDENTS.

UNITED STATES OF AMERICA:

LOCAL SECRETARY AND TREASURER:

RICHARD W. HALE	60 State Street, Boston, Massachusetts.

CORRESPONDENTS:

MINNESOTA:	
HENRY B. WENZELL	601 New York Life Building, St. Paul.
NEW YORK:	
GORDON TAYLOR HUGHES	120 Broadway, New York City.
ILLINOIS:	
JOHN HENRY WIGMORE	North-Western University Law School, Chicago.

LOCAL SECRETARIES AND CORRESPONDENTS:

DOMINION OF CANADA:	
W. McGREGOR YOUNG	The Law School, Osgoode Hall, Toronto.
NEW ZEALAND:	
Mr. Justice F. REVANS CHAPMAN	Dunedin.

RULES

1. The Society shall be called the Selden Society.

2. The object of the Society shall be to encourage the study and advance the knowledge of the history of English Law, especially by the publication of original documents and the reprinting or editing of works of sufficient rarity or importance.

3. Membership of the Society shall be constituted by payment of the annual subscription, or, in the case of life members, of the composition. Form of application is given at the foot.

4. The annual subscription shall be £1. 1*s*., payable in advance on or before the 1st of January in every year. A composition of £21 shall constitute life membership from the date of the composition, and, in the case of Libraries, Societies, and corporate bodies, membership for 30 years.

5. The management of the affairs and funds of the Society shall be vested in a President, two Vice-Presidents, and a Council consisting of fifteen members, in addition to the *ex officio* members. The President, the two Vice-Presidents, the Literary Director or Directors, the Secretary, and the Treasurer shall be *ex officio* members. Three shall form a quorum.

6. The President, Vice-Presidents, and Members of the Council shall be elected for three years. At every Annual General Meeting such one of the President and Vice-Presidents as has, and such five members of the Council as have, served longest without re-election, shall retire.

7. The five vacancies in the Council shall be filled up at the Annual General Meeting in the following manner: (*a*) Any two Members of the Society may nominate for election any other member by a writing signed by them and the nominated member, and sent to the Secretary on or before the 14th of February. (*b*) Not less than fourteen days before the Annual General Meeting the Council shall nominate for election five members of the Society. (*c*) No person shall be eligible for election on the Council unless nominated under this Rule. (*d*) Any candidate may withdraw. (*e*) The names of the persons nominated shall be printed in the notice convening the Annual General Meeting. (*f*) If the persons nominated, and whose nomination shall not have been withdrawn, are not more than five, they shall at the Annual General Meeting be declared to have been elected. (*g*) If the persons nominated, and whose nomination shall not have been withdrawn, shall be more than five, an

election shall take place by ballot as follows : every member of the Society present at the Meeting shall be entitled to vote by writing the names of not more than five of the candidates on a piece of paper and delivering it to the Secretary or his Deputy, at such meeting, and the five candidates who shall have a majority of votes shall be declared elected. In case of equality the Chairman of the Meeting shall have a second or casting vote. The vacancy in the office of President or Vice-President shall be filled in the same manner (*mutatis mutandis*).

8. The Council may fill casual vacancies in the Council or in the offices of President and Vice-President. Persons so appointed shall hold office so long as those in whose place they shall be appointed would have held office. The Council shall also have power to appoint Honorary Members of the Society.

9. The Council shall meet at least twice a year, and not less than seven days' notice of any meeting shall be sent by post to every member of the Council.

10. The Council may appoint a Literary Director or Directors, a Secretary, a Treasurer, and such other officers as they shall from time to time think fit, to hold office during the pleasure of the Council ; and may from time to time prescribe their respective duties ; and may make any arrangements for the remuneration of any officer which they may from time to time think reasonable.

11. It shall be the duty of the Literary Director or Directors (but always subject to the control of the Council) to supervise the editing of the publications of the Society, to suggest suitable editors, and generally to advise the Council with respect to carrying the objects of the Society into effect.

12. Each member shall be entitled to one copy of every work published by the Society as for any year of his membership. No person other than an Honorary Member shall receive any such work until his subscription for the year as for which the same shall be published shall have been paid. Provided that any member may be supplied with any publications on such terms as the Council may from time to time determine.

13. The funds of the Society, including the vouchers or securities for any investments, shall be kept at a Bank, to be selected by the Council, in the name of the Society. Such funds or investments shall only be dealt with by a cheque or other authority signed by the Treasurer and countersigned by one of the Vice-Presidents or such other person as the Council may from time to time appoint.

14. The accounts of the receipts and expenditure of the Society up to the 31st of December in each year shall be audited once a year by two Auditors, to be appointed by the Society, and the report of the Auditors, with an

abstract of the accounts, shall be circulated together with the notice convening the Annual Meeting.

15. An Annual General Meeting of the Society shall be held in March 1896, and thereafter in the month of March in each year. The Council may upon their own resolution and shall on the request in writing of not less than ten members call a Special General Meeting. Seven days' notice at least, specifying the object of the meeting and the time and place at which it is to be held, shall be posted to every member resident in the United Kingdom at his last known address. No member shall vote at any General Meeting whose subscription is in arrear.

16. The Secretary shall keep a Minute Book wherein shall be entered a record of the transactions, as well at Meetings of the Council as at General Meetings of the Society.

17. These rules may upon proper notice be repealed, added to, or modified from time to time at any meeting of the Society. But such repeal, addition, or modification, if not unanimously agreed to, shall require the vote of not less than two-thirds of the members present and voting at such meeting.

March 1909.

FORM OF APPLICATION FOR MEMBERSHIP.

To the Honorary Secretary of the Selden Society.

I desire to become a member of the Society, and herewith send my cheque for One Guinea, the annual subscription [*or* £21 the life contribution] dating from the commencement of the present year. [I also desire to subscribe for the past publications (vols.), and I add £ to my cheque.]

Name . . . . . .

Address . . . . . .

Description . . . . . .

Date . . . . . .

[NOTE —Cheques, crossed "ROBARTS & Co., a/c of the Selden Society," should be made payable to the Hon. Treasurer. Forms of bankers' orders for payment of subscriptions direct to the Society's banking account can be obtained from the Hon. Secretary or Hon. Treasurer.]

Spottiswoode & Co. Ltd., Printers, Colchester, London and Eton.

11.6.12.